

Texas Family Code (Part 2)

This outline is provided to give clients a general understanding of the processes and issues that may be involved in the clients case. This is an outline that may not be up to date and the outline is far from comprehensive. It is not a substitute for legal advice and is not intended to assist in the prosecution of any case. It is offered solely as information to make the litigation process more decipherable to the client. It is not intended and should not be used as a substitute for legal advice.

153.008. Childs Choice of Managing Conservator

If the child is 10 years of age or older, the child may, by writing filed with the court, choose the managing conservator, subject to the approval of the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1390, 12, eff. Sept. 1, 1999.

153.009. Interview of Child in Chambers

(a) In a nonjury trial the court may interview the child in chambers to determine the child's wishes as to conservatorship.

(b) When the issue of managing conservatorship is contested, on the application of a party, the court shall interview a child 10 years of age or older and may interview a child under 10 years of age. Interviewing a child does not diminish the discretion of the court.

(c) The court may permit the attorney for a party or the attorney ad litem for the child to be present at the interview.

(d) On the motion of a party or on the court's own motion, the court shall cause a record of the interview to be made when the child is 10 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 781, 1, eff. Sept. 1, 1997.

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 masters 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 645, 1, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 28, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 786, 2, eff. Sept. 1, 1997.

SUBCHAPTER B. PARENT APPOINTED AS CONSERVATOR: IN GENERAL

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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) as specified by court order:

(A) to receive information from the other parent concerning the health, education, and welfare of the child; and

(B) to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;

(2) of access to medical, dental, psychological, and educational records of the child;

(3) to consult with a physician, dentist, or psychologist of the child;

(4) to consult with school officials concerning the child's welfare and educational status, including school activities;

(5) to attend school activities;

(6) to be designated on the child's records as a person to be notified in case of an emergency;

(7) to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

(8) 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 29, eff. Sept. 1, 1995.

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;

(4) the right to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child; and

(5) the right to direct the moral and religious training of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 30, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

153.076. Parents Duty to Provide Information

(a) If both parents are appointed as conservators of the child, the court shall order that each parent has a duty to inform the other parent in a timely manner of significant information concerning the health, education, and welfare of the child.

(b) If both parents are appointed as conservators of a child, the court shall order that each parent has the duty to inform the other parent if the parent resides with for at least 30 days, marries, or intends to marry a person who the parent knows:

(1) is registered as a sex offender under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997; or

(2) is currently charged with an offense for which on conviction the person would be required to register under that chapter.

(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 parent 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 persons requirement to register as a sex offender or of the offense with which the person is charged.

(d) A person commits an offense if the person fails to provide notice in the manner required by Subsections (b) and (c). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 751, 31, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 330, 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PARENT APPOINTED AS SOLE OR JOINT MANAGING CONSERVATOR

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 32, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1193, 20, eff. Sept. 1, 1997.

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 establish the primary residence of the child;
- (2) the right to consent to medical, dental, and surgical treatment involving invasive procedures, and to consent to psychiatric and psychological treatment;
- (3) 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;
- (4) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (5) the right to consent to marriage and to enlistment in the armed forces of the United States;
- (6) the right to make decisions concerning the child's education;
- (7) the right to the services and earnings of the child; and
- (8) 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 33, eff. Sept. 1, 1995.

153.133. Agreement for Joint Managing Conservatorship

(a) If a written agreement of the parents is filed with the court, the court shall render an order appointing the parents as joint managing conservators only if the agreement:

- (1) designates the conservator who has the exclusive right to establish 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 establish 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 agreement 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 936, 1, eff. Sept. 1, 1999.

153.134. Court-Ordered Joint Conservatorship

(a) If a written agreement of the parents 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 appointment of joint managing conservators; 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 consisting of the county in which the child is to reside and any contiguous county thereto 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 936, 2, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

153.136. Court Designation of Primary Physical Residence

If joint managing conservatorship is ordered, the best interest of the child ordinarily requires the court to designate a primary physical residence for the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

153.137. Guidelines for the Possession of Child by Parent Named as Joint Managing Conservator

The standard possession order provided by Subchapter F constitutes a presumptive minimum amount of time for possession of a child by a parent named as a joint managing conservator who is not awarded the primary physical residence of the child in a suit.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

SUBCHAPTER D. PARENT APPOINTED AS POSSESSORY CONSERVATOR

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

153.193. Minimal Restriction on Parents Possession or Access

The terms of an order that denies possession of a child to a parent or imposes restrictions or limitations on a parents 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, 1, eff. April 20, 1995.

SUBCHAPTER E. GUIDELINES FOR THE POSSESSION OF A CHILD BY A PARENT NAMED AS POSSESSORY CONSERVATOR

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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.

(b) 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 35, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

153.258. Request for Findings When Order Varies From Standard Order

Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, 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, on written request made or filed with the court not later than 10 days after the date of the hearing or on oral request made in open court during the hearing, the court shall state in the order the specific reasons for the variance from the standard order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER F. STANDARD POSSESSION ORDER

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 order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 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 or, at the possessory conservators election made before or at the time of the rendition of the original or modification order, and as specified in the original or modification order, beginning at the time the child's school is regularly dismissed and ending at 6 p.m. on the following Sunday; and

(2) on Wednesdays of each week during the regular school term beginning at 6 p.m. and ending at 8 p.m., or, at the possessory conservators election made before or at the time of the rendition of the original or modification order, and as specified in the original or modification order, beginning at the time the child's school is regularly dismissed and ending at the time the child's school resumes, 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 Wednesday 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; 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 Fathers Day if the possessory conservator is the father of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 802, 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 236, 1, eff. Sept. 1, 1999.

153.313. Parents Who Reside Over 100 Miles a Part

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 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; 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, 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 Fathers Day if the possessory conservator is the father of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 36, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 236, 2, eff. Sept. 1, 1999.

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 Wednesday 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 26, 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 26 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 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 Fathers Day and ending on Fathers Day at 6 p.m., provided that, if he is not otherwise entitled under this standard 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 Mothers Day and ending on Mothers Day at 6 p.m., provided that, if she is not otherwise entitled under this standard 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, 1, eff. April 20, 1995.

153.315. Weekend Possession Extended by Holiday

(a) If a weekend period of possession of the possessory conservator coincides with a school holiday during the regular school term or with a federal, state, or local holiday during the summer months in which school is not in session, the weekend possession shall end at 6 p.m. on a Monday holiday or school holiday or shall begin at 6 p.m. Thursday for a Friday holiday or school holiday, as applicable.

(b) At the possessory conservators election, made before or at the time of the rendition of the original or modification order, and as specified in the original or modification order, periods of possession extended by a holiday may begin at the time the childs school is regularly dismissed.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 conservators possession at the residence of the managing conservator;

(2) if the possessory conservator elects to begin a period of possession at the time the childs 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 conservators county of residence remains the same after the rendition of the order, and the

managing conservators 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 conservators county of residence remains the same and the managing conservators 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 shall be deemed to have been timely made if received or 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 37, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 9, 1, eff. Sept. 1, 1997.

153.317. Alternative Possession Times

If a child is enrolled in school and the possessory conservator elects before or at the time of the rendition of the original or modification order, the standard order must expressly provide that the possessory conservator's period of possession shall begin or end, or both, at a different time expressly set in the standard order under and within the range of alternative times provided by one or both of the following subdivisions:

(1) instead of a period of possession by a possessory conservator beginning at 6 p.m. on the day school recesses, the period of possession may be set in the standard possession order to begin at the time the child's school is regularly dismissed or at any time between the time the child's school is regularly dismissed and 6 p.m.; and

(2) except for Wednesday evening possession, instead of a period of possession by a possessory conservator ending at 6 p.m. on the day before school resumes, the period of possession may be set in the standard order to end at the time school resumes.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 9, 1, eff. Sept. 1, 1997.

SUBCHAPTER G. APPOINTMENT OF NONPARENT AS CONSERVATOR

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, licensed child-placing agency, or authorized agency 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 establish 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 34, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 949, 1, eff. Sept. 1, 1999.

153.372. Nonparent Appointed as Joint Managing Conservator

- (a) A nonparent, authorized agency, or 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, 1, eff. April 20, 1995.

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, 2, eff. Sept. 1, 1999.

153.373. Voluntary Surrender of Possession Rebutts 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, licensed child-placing agency, or authorized agency 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 or agency as managing conservator is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

153.374. Designation of Managing Conservator in Affidavit of Relinquishment

(a) A parent may designate a competent person, authorized agency, or 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 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 38, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

153.376. Rights and Duties of Nonparent Possessory Conservator

(a) Unless limited by court order or other provisions of this chapter, a nonparent, licensed child-placing agency, or authorized agency 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, 1, eff. April 20, 1995.

153.377. Access to Childs 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, 1, eff. April 20, 1995.

SUBCHAPTER H. RIGHTS OF GRANDPARENT

153.431. Grandparental Appointment as Managing Conservators

If the parents are deceased, the grandparents may be considered for appointment as managing conservators, but consideration does not alter or diminish the discretionary power of the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

153.432. Suit for Access

(a) A biological or adoptive grandparent may request 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 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

153.433. Possession of and Access to Grandchild

The court shall order reasonable 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; and

(2) access is in the best interest of the child, and at least one of the following facts is present:

(A) the grandparent requesting access to the child is a parent of a parent of the child and that parent of the child has been incarcerated in jail or prison during the three-month period preceding the filing of the petition or has been found by a court to be incompetent or is dead;

(B) the parents of the child are divorced or have been living apart for the three-month period preceding the filing of the petition or a suit for the dissolution of the parents marriage is pending;

(C) the child has been abused or neglected by a parent of the child;

(D) the child has been adjudicated to be a child in need of supervision or a delinquent child under Title 3;

(E) the grandparent requesting access to the child is the parent of a person whose parent-child relationship with the child has been terminated by court order; or

(F) the child has resided with the grandparent requesting access to the child for at least six months within the 24-month period preceding the filing of the petition.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1397, 1, eff. Sept. 1, 1997.

153.434. Limitation on Right to Request 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 persons 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 an authorized agency, licensed child-placing agency, or 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1390, 13, eff. Sept. 1, 1999.

CHAPTER 154. CHILD SUPPORT

SUBCHAPTER A. COURT BORDERED CHILD SUPPORT

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.

(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 IVBD 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 39, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 8, eff. Sept. 1, 1999.

154.002. Child Support Through High School Graduation

(a) If the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma or enrolled in courses for joint high school and junior college credit pursuant to Section 130.008, Education Code, the court may render an original support order or modify an existing order providing child support past the 18th birthday of the child.

(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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 506, 1, eff. Aug. 30, 1999.

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, 1, eff. April 20, 1995.

154.004. Place of Payment

(a) The court shall order the payment of child support to a local registry, the Title IVBD agency, or the state disbursement unit, as provided by Chapter 234, as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997.

(b) In a Title IVBD case, the court or the Title IVBD agency shall order that income withheld for child support be paid:

(1) to the Title IVBD agency through a local registry, which shall forward the payment to the Title IVBD agency;

(2) to the Title IVBD agency; or

(3) to the state disbursement unit.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 9, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 the marriage of the child, removal of the child's disabilities for general purposes, or death of the child or a parent ordered to pay child support.

(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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 9, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 10, eff. Sept. 1, 1997.

154.008. Provision for Health Insurance Coverage

The court shall order health insurance coverage for the child as provided by Subchapters B and D.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 IVBD 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 40, eff. Sept. 1, 1995.

154.012. Support Paid After Termination of Support Order

(a) If the obligor is not in arrears, an obligee shall return to an obligor a child support payment made by the obligor after the date the child support order has 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 attorneys 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 attorneys fees and costs if the court states the reasons supporting that finding.

Added by Acts 1999, 76th Leg., ch. 363, 1, eff. Sept. 1, 1999.

SUBCHAPTER B. COMPUTING NET RESOURCES AVAILABLE FOR PAYMENT OF CHILD SUPPORT

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 IVBD 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, 1, eff. April 20, 1995.

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, 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; or

(3) benefits paid in accordance with aid for families with dependent children.

(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; and

(5) expenses for health insurance coverage for the obligors child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 41, eff. Sept. 1, 1995.

154.063. Party to Furnish Information

The court shall require a party to:

(1) furnish information sufficient to accurately identify that partys 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, 1, eff. April 20, 1995.

154.064. Health Insurance 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 health insurance coverage 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

154.066. Intentional Unemployment or Underemployment

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

154.068. Wage and Salary Presumption

In the absence of evidence of the wage and salary income of a party, the court shall presume that the party has wages or salary equal to the federal minimum wage for a 40-hour week.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 obligors 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, 1, eff. April 20, 1995.

SUBCHAPTER C. CHILD SUPPORT GUIDELINES

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 obligees 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, 1, eff. April 20, 1995.

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 in the order may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as contract terms unless provided by the agreement.
- (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, 1, eff. April 20, 1995.

154.125. Application of Guidelines to Net Resources of \$6,000 or Less

- (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 \$6,000 or less.
- (b) If the obligor's monthly net resources are \$6,000 or less, 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, 1, eff. April 20, 1995.

154.126. Application of Guidelines to Net Resources of More Than \$6,000 Monthly

(a) If the obligor's net resources exceed \$6,000 per month, the court shall presumptively apply the percentage guidelines to the first \$6,000 of the obligor's net resources. 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 first \$6,000 of the obligor's net resources 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, 1, eff. April 20, 1995.

154.127. Partial Termination of Support Obligation

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 obligors adjusted net resources.

(b) For the purpose of determining a child support credit, the total number of an obligors 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, 1, eff. April 20, 1995.

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 obligors 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, 1, eff. April 20, 1995.

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 not later than 10 days after the date of the hearing;
- (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.

(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 monthly net resources of the obligor per month are \$_____;

"(2) the monthly net resources of the obligee per month are \$_____;

"(3) the percentage applied to the obligors net resources for child support by the actual order rendered by the court is _____%;

"(4) the amount of child support if the percentage guidelines are applied to the first \$6,000 of the obligors net resources is \$_____;

"(5) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount stated in Subdivision (4) are: _____; and

"(6) if applicable, the obligor is obligated to support children in more than one household, and:

"(A) the number of children before the court is _____;

"(B) the number of children not before the court residing in the same household with the obligor is _____; and

"(C) the number of children not before the court for whom the obligor is obligated by a court order to pay support, without regard to whether the obligor is delinquent in child support payments, and who are not counted under Paragraph (A) or (B) is _____."

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.131. Application of Guidelines to Retroactive 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 biological father of his paternity or probable paternity;

(2) the biological father 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 obligors family; and

(4) the obligor has provided actual support or other necessities before the filing of the action.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.132. Application of Guidelines to Children of Certain Disabled Obligor

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 obligors 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 obligors disability.

Added by Acts 1999, 76th Leg., ch. 891, 1, eff. Sept. 1, 1999.

SUBCHAPTER D. MEDICAL SUPPORT FOR CHILD

154.181. Medical Support Order

In a suit affecting the parent-child relationship or in a proceeding under Chapter 159, the court shall render an order for the medical support of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.182. Health Insurance

(a) The court shall consider the cost 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.

(b) Except as provided for by Subdivision (6), in determining the manner in which health insurance 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 the obligors employment or membership in a union, trade association, or other organization, the court shall order the obligor to include the child in the obligors health insurance;

(2) if health insurance is not available for the child through the obligors employment but is available for the child through the obligees employment or membership in a union, trade association, or other organization, the court may order the obligee to provide health insurance for the child, and, in such event, shall order the obligor to pay additional child support to be withheld from earnings under Chapter 158 to the obligee for the actual cost of the health insurance for the child;

(3) if health insurance is not available for the child under Subdivision (1) or (2), the court shall order the obligor to provide health insurance for the child if the court finds that health insurance is available for the child from another source and that the obligor is financially able to provide it;

(4) if health insurance is not available for the child under Subdivision (1), (2), or (3), the court shall order the obligor to apply for coverage through the Texas Healthy Kids Corporation established under Chapter 109, Health and Safety Code;

(5) if health coverage is not available for the child under Subdivision (1), (2), (3), or (4), the court shall order the obligor to pay the obligee, in addition to any amount ordered under the guidelines for child support, a reasonable amount each month as medical support for the child to be withheld from earnings under Chapter 158; or

(6) notwithstanding Subdivisions (1) through (3), an obligor whose employer, union, trade association, or other organization does not offer a child/children coverage option in lieu of a spouse/child/children option of health insurance coverage may elect to apply for coverage through the Texas Healthy Kids Corporation. An obligor required to pay additional child support to an obligee for health insurance coverage may elect to apply for coverage through the Texas Healthy Kids Corporation if the obligees employer, union, trade association, or other organization does not offer a child/children coverage option in lieu of a spouse/child/children option of health insurance coverage.

(c) In establishing the amount of additional medical child support under Subsection (b)(5), the court shall presume that \$38 each month is a reasonable amount for a child but may order a greater or lesser amount as appropriate under the circumstances. The Health and Human Services Commission may promulgate guidelines for the dollar amounts of medical child support that the court may presumptively apply in circumstances in which the obligor is responsible for medical child support for more than one child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 550, 2, eff. June 2, 1997.

154.183. Health Insurance Additional Support Duty of Obligor

(a) An amount that an obligor is required to pay for health insurance for the child:

(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 as a child support obligation.

(b) If the court finds and states in the child support order that the obligee will maintain health insurance coverage for the child at the obligees expense, the court may increase the amount of child support to be paid by the obligor in an amount not exceeding the total expense to the obligee for maintaining health insurance coverage.

(c) As additional child support, the court shall allocate between the parties, according to their circumstances, the reasonable and necessary health care expenses of a child that are not reimbursed by health insurance.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.184. Effect of Order

(a) Receipt of a medical support order requiring that health insurance be provided for a child shall be considered a change in the family circumstances of the employee or member, for health insurance purposes, equivalent to the birth or adoption of a child.

(b) If the employee or member is eligible for dependent health 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 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 4.03, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 11, eff. Sept. 1, 1997.

154.185. Parent to Furnish Information

(a) The court shall order a parent providing health insurance to furnish to either the obligee, obligor, local domestic relations office, or Title IVBD 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) whether the employer is self-insured or has health insurance available;

(4) proof that health insurance has been provided for the child;

(5) 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

(6) 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 to furnish the obligor, obligee, local domestic relations office, or Title IVBD agency with additional information regarding health 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, 1, eff. April 20, 1995.

154.186. Notice to Employer Concerning Medical Support

The obligee, obligor, or a child support agency may send to the employer a copy of the order requiring an employee to provide health insurance coverage for a child or may include notice of the medical support order in an order or writ of withholding sent to the employer in accordance with Chapter 158.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 4.04, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 12, eff. Sept. 1, 1997.

154.187. Duties of Employer

(a) An order or notice under this subchapter to an employer directing that health 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 for the child, the employer shall immediately enroll the child in a health 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 employers health 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, the employer shall deduct the health 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, by first class mail not later than the 30th day after the date the employer receives the order or notice, a statement that the child:

(1) has been enrolled in a health insurance plan; or

(2) cannot be enrolled or cannot be enrolled permanently in a health 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 lapses, the employer shall provide to the sender, by first class mail 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, including the name of the health insurance carrier, the policy number, a copy of the policy and schedule of benefits, a health insurance membership card, and claim forms.

(f) In this section, "sender" means the person sending the order 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 shall be subject to the penalties and fines in Subchapter C, Chapter 158.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 4.05, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 13, eff. Sept. 1, 1997.

154.188. Failure to Provide Required Health Insurance

A parent ordered to provide health insurance who fails to do so is liable for necessary medical expenses of the child, without regard to whether the expenses would have been paid if health insurance had been provided.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.189. Notice of Termination or Lapse of Insurance Coverage

(a) An obligor ordered to provide health 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 for the child not later than the 15th day after the date of a termination or lapse; and

(2) availability of additional health 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 for a child or notice of the medical support order as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 14, eff. Sept. 1, 1997.

154.190. Reenrolling Child for Insurance Coverage

After health insurance has been terminated or has lapsed, an obligor ordered to provide health insurance coverage for the child must enroll the child in a health insurance plan at the next available enrollment period.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.191. Remedy Not Exclusive

(a) This subchapter does not limit the rights of the obligor, obligee, local domestic relations office, or Title IVBD agency to enforce, modify, or clarify the medical support order.

(b) This subchapter does not limit the authority of the court to render or modify a medical support order containing a provision for payment of uninsured health expenses, health care costs, or health insurance premiums that are in addition to and inconsistent with this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

154.192. Cancellation or Elimination of Insurance Coverage for Child

(a) Unless the employee or member ceases to be eligible for dependent coverage, or the employer has eliminated dependent health 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 health 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 4.06, eff. Sept. 1, 1995.

154.193. Medical Support Order Not Qualified

(a) If a plan administrator or other person acting in an equivalent position determines that a medical 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, 15, eff. Sept. 1, 1997.

SUBCHAPTER E. LOCAL CHILD SUPPORT REGISTRY

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 IVBD 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 courts order.

(c) A local registry shall include with each payment it forwards to the Title IVBD 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 cashiers 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 obligees 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 42, eff. Sept. 1, 1995.

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 IVBD 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 IVBD 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 597, 1, eff. Jan. 1, 1996.

Amended by Acts 1997, 75th Leg., ch. 702, 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1053, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 10, eff. Sept. 1, 1999.

154.243. Production of Child Support Payment Record

The Title IVBD 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 10, eff. Sept. 1, 1999.

SUBCHAPTER F. SUPPORT FOR A MINOR OR ADULT DISABLED CHILD

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, 1, eff. April 20, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1173, 1, eff. Sept. 1, 1997.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1173, 2, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 751, 43, eff. Sept. 1, 1995.

CHAPTER 155. CONTINUING, EXCLUSIVE JURISDICTION; TRANSFER

SUBCHAPTER A. CONTINUING, EXCLUSIVE JURISDICTION

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 biological 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 determine 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 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.19, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.20, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 after the court 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 bureau of vital statistics 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 8, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

SUBCHAPTER B. IDENTIFICATION OF COURT OF CONTINUING, EXCLUSIVE JURISDICTION

155.101. Request for Identification of Court of Continuing, Exclusive Jurisdiction

(a) The petitioner or the court shall request from the bureau of vital statistics 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 bureau of vital statistics 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 bureau of vital statistics 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 44, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 178, 8, eff. Aug. 30, 1999.

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, 1, eff. April 20, 1995.

155.103. Reliance on Bureau of Vital Statistics Information

(a) A court shall have jurisdiction over a suit if it has been, correctly or incorrectly, informed by the bureau of vital statistics 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 bureau of vital statistics notifies the court that the bureau 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 45, eff. Sept. 1, 1995.

155.104. Voidable Order

(a) If a request for information from the bureau of vital statistics 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 bureau of vital statistics, 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 46, eff. Sept. 1, 1995.

SUBCHAPTER C. TRANSFER OF CONTINUING, EXCLUSIVE JURISDICTION

155.201. Mandatory Transfer

(a) On a showing that a suit for dissolution of the marriage of the child's parents has been filed in another court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship shall transfer the proceedings to the court in which the dissolution of the marriage is pending.

(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 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1135, 1, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

155.204. Procedure for Transfer

(a) Except as provided by 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. 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 be transferred promptly without a hearing to the proper court.

(b) 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.

(c) 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.

(d) Only evidence pertaining to the transfer may be taken at the hearing.

(e) An order transferring or refusing to transfer the proceeding is not subject to interlocutory appeal.

(f) If a transfer order has been rendered by a court exercising jurisdiction under Chapter 262, a party may file the transfer order with the clerk of the court of continuing, exclusive jurisdiction. On receipt and without a hearing, the clerk of the court of continuing, exclusive jurisdiction shall transfer the files as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 14, eff. Sept. 1, 1999.

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, the Title IVBD agency, or the state disbursement unit.

(b) The transferring courts local registry, the Title IVBD agency, 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 courts 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 courts local registry.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 11, eff. Sept. 1, 1999.

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 courts 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, 1, eff. April 20, 1995.

155.207. Transfer of Court Files

(a) On rendition of an order of transfer, 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 complete files in all matters affecting the child;

(2) certified copies of all entries in the minutes;

(3) a certified copy of any order of dissolution of marriage rendered in a suit joined with the suit affecting the parent-child relationship; and

(4) a certified copy of each order rendered.

(b) The clerk of the transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of another child who was the subject of the suit, the clerk shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(c) On receipt of the files, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify all parties, the clerk of the transferring court, and the transferring courts 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 to the local registry of the transferee court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER D. TRANSFER OF PROCEEDINGS WITHIN THE STATE WHEN PARTY OR CHILD RESIDES OUTSIDE THE STATE

155.301. Authority to Transfer

(a) A court of this state with continuing, exclusive jurisdiction over a suit or an action for child support 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 proceedings 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) 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

CHAPTER 156. MODIFICATION

SUBCHAPTER A. GENERAL PROVISIONS

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, 1, eff. April 20, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 178, 9, eff. Aug. 30, 1999.

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, 1, eff. April 20, 1995.

156.005. Frivolous Filing of Suit for Modification

If the court finds that a suit for modification is filed frivolously or is designed to harass a party, the court shall tax attorneys fees as costs against the offending party.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 changing the designation of a sole or joint managing conservator appointed in a final order unless:

(1) the order is necessary because the child's present living environment may endanger the child's physical health or significantly impair the child's emotional development;

(2) the child's managing conservator has voluntarily relinquished the actual care, control, and possession of the child for more than six months and the temporary order is in the best interest of the child; or

(3) the child is 10 years of age or older and has filed with the court in writing the name of the person who is the child's choice for managing conservator and the temporary order naming that person as managing conservator is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1390, 15, eff. Sept. 1, 1999.

SUBCHAPTER B. MODIFICATION OF SOLE MANAGING CONSERVATORSHIP

156.101. Grounds for Modification of Sole Managing Conservatorship

(a) The court may modify an order that designates a sole managing conservator of a child of any age if:

(1) the circumstances of the child, sole managing conservator, possessory conservator, or other party affected by the order have materially and substantially changed since the date of the rendition of the order; and

(2) the appointment of the new sole managing conservator would be a positive improvement for the child.

(b) The court may modify an order that designates a sole managing conservator of a child 10 years of age or older if:

(1) the child has filed with the court in writing the name of the person who is the child's choice for managing conservator; and

(2) the court finds that the appointment of the named person is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 47, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1390, 16, eff. Sept. 1, 1999.

156.102. Modification of Sole Managing Conservatorship Within One Year of Order

(a) If a suit seeking to modify sole managing conservatorship is filed not later than one year after the date of rendition of the order, 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 sole managing conservator is the person seeking or consenting to the modification and the modification is in the best interest of the child; or

(3) that the child's sole managing conservator has voluntarily relinquished the actual care, control, and possession of the child for not less than 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.103. Voluntary Relinquishment

The court may modify an order that designates a sole managing conservator if the sole managing conservator has voluntarily relinquished actual care, control, and possession of the child for a period of not less than six months and the modification is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.104. Modification From Sole Managing Conservatorship to Joint Managing Conservatorship

(a) The court may modify an order that designates a sole managing conservator if a parent of the child requests appointment as a joint managing conservator and the court finds that:

(1) the circumstances of the child or the sole managing conservator have materially and substantially changed since the rendition of the order;

(2) retention of a sole managing conservatorship would be detrimental to the welfare of the child; and

(3) the appointment of the parent as a joint managing conservator would be a positive improvement for and in the best interest of the child.

(b) An order of joint conservatorship, in and of itself, does not constitute grounds for modifying a support order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.105. Statutory Change of Circumstance

(a) The power of the court to order a joint managing conservatorship under Chapter 153 is a material and substantial change of circumstances sufficient to justify a modification of an existing sole managing conservatorship to a joint managing conservatorship if the sole managing conservatorship was ordered in a suit affecting the parent-child relationship in which a final order was rendered on or after September 1, 1987.

(b) The power of the court to order a joint managing conservatorship is not a material and substantial change of circumstances sufficient to justify a modification of an existing sole managing conservatorship to a joint managing conservatorship if the sole managing conservatorship was ordered in a suit affecting the parent-child relationship in which a final order was rendered before September 1, 1987.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER C. MODIFICATION OF JOINT MANAGING CONSERVATORSHIP

156.201. Written Agreement to Modify Joint Managing Conservatorship

The joint managing conservators may enter into a written agreement to modify the terms and conditions of an existing joint conservatorship order, and the court may modify the existing order according to the agreement if the court finds that the modification meets the standards for joint managing conservatorship in Chapter 153.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.202. Modification of Terms and Conditions of Joint Managing Conservatorship

The court may modify the terms and conditions of a joint conservatorship order if:

(1)(A) the circumstances of the child or of one or both of the joint managing conservators have materially and substantially changed since the rendition of the order; or

(B) the order has become unworkable or inappropriate under existing circumstances; and

(2) a modification of the terms and conditions of the order would be a positive improvement for and in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.203. Modification From Joint Managing Conservatorship to Sole Managing Conservatorship

The court may replace a joint managing conservatorship with a sole managing conservatorship if:

(1)(A) the child's present living environment may endanger the child's physical health or significantly impair the child's emotional development;

(B) there has been a substantial and unexcused violation of the terms and conditions established in the existing conservatorship order; or

(C) the circumstances of the child or of one or both of the joint managing conservators have so materially and substantially changed since the rendition of the order that it has become unworkable or inappropriate under existing circumstances; and

(2) the appointment of a sole managing conservator would be a positive improvement for and in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 48, eff. Sept. 1, 1995.

SUBCHAPTER D. MODIFICATION OF POSSESSION OF OR ACCESS TO CHILD

156.301. Grounds for Modification of Possession and Access

The court may modify an order that sets the terms and conditions for possession of or access to a child or that prescribes the relative rights and duties of conservators if:

(1) the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the rendition of the order;

(2) the order has become unworkable or inappropriate under existing circumstances;

(3) the notice of change of a conservators residence required by Chapter 105 was not given or there was a change in a conservators residence to a place outside this state;

(4) a conservator has repeatedly failed to give notice of an inability to exercise possessory rights; or

(5) a conservator of the child has had a significant history of alcohol or drug abuse since the date of the rendition of the order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 178, 10, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1390, 17(a), eff. Sept. 1, 1999.

156.302. Effect of Guidelines

(a) The court may consider the guidelines for possession of and access to a child in Chapter 153 to determine if there has been a material and substantial change in circumstances or if the order has become unworkable or inappropriate under this subchapter in determining whether a modification of the existing order for possession of or access to a child by a parent is in the best interest of the child.

(b) The court may modify an order for possession of and access to a child that does not substantially conform to the standard possession order if the modification is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.303. 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 costs on a fair and equitable basis, taking into account the cause of the increased costs and the best interest of the child.

(b) The payment of increased costs 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 of possession of or access to the child is made.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.304. Modification of Order on Conviction for Child Abuse

(a) The conviction or an order deferring adjudication of an individual who is a possessory conservator or a sole or joint managing 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 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 for or access to a child.

(b) A person commits an offense if the person files a motion to modify an order or portion of a decree under this section and the person knows that the person against whom the motion is filed has not been convicted of or received deferred adjudication for an offense under Section 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. 602, 1, eff. Sept. 1, 1995.

SUBCHAPTER E. MODIFICATION OF CHILD SUPPORT

156.401. Grounds for Modification of Child Support

(a) Except as provided by Subsection (b), the court may modify an 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 since the date of the order's rendition; 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.

(b) A support order may be modified 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 Subsection (a)(1) if the obligors child support obligation was abated, reduced, or suspended during the period of the obligors incarceration.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 43, 1, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, 12, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 obligors child support obligation.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.23, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, 13, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 and any aspect of conservatorship as provided by this chapter without reference to Chapter 159.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

156.409. Change in Physical Possession

If the sole managing conservator of a child or the joint managing conservator who designates the child's primary residence has voluntarily relinquished the actual care, control, and possession of the child for at least six months, the court may modify an order providing for the support of the child to provide that the person having physical possession of the child 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.

Added by Acts 1999, 76th Leg., ch. 556, 14, eff. Sept. 1, 1999.

CHAPTER 157. ENFORCEMENT

SUBCHAPTER A. PLEADINGS AND DEFENSES

157.001. Motion for Enforcement

(a) A motion for enforcement as provided in this chapter may be filed to enforce a final order for conservatorship, child support, possession of or access to a child, or other provisions of a final order.

(b) The court may enforce by contempt a final order for possession of and access to a child as provided in this chapter.

(c) The court may enforce a 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 respondents alleged noncompliance;

(3) state the relief requested by the movant; and

(4) contain the signature of the movant or the movants 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 respondents 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 17, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.24, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 sixth month after 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 judgment for past-due child support until the date all current child support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 15, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

SUBCHAPTER B. PROCEDURE

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, 1, eff. April 20, 1995.

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 an existing order providing for child support or possession of or access to a child 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.
- (d) If a motion for enforcement 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 49, eff. Sept. 1, 1995.

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 courts jurisdiction or the form or manner of the notice of hearing.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 partys current mailing address, notice of a motion for enforcement may be served by mailing a copy of the notice to the respondent, together with a copy of the motion, 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 movants attorney, 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, 97(a), eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 18, 97(a), eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 50, eff. Sept. 1, 1995.

SUBCHAPTER C. FAILURE TO APPEAR; BOND OR SECURITY

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, 1, eff. April 20, 1995.

157.102. Capias; Duty of Law Enforcement Officials

Law enforcement officials shall treat the capias in the same manner as an arrest warrant for a criminal offense and shall enter the capias in the computer records for outstanding warrants maintained by the local police, sheriff, and Department of Public Safety. The capias 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 16, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

157.104. Conditional Release

If the respondent is taken into custody and released on bond, the court shall condition the bond on the respondents 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, 1, eff. April 20, 1995.

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 first working day after the arrest. The court shall determine whether the respondents 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.

(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 respondents 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 fifth day after the date that the respondent was taken into custody, unless the respondent and the respondents attorney waive the accelerated hearing.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 attorneys 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, 1, eff. April 20, 1995.

157.111. Forfeiture Not Defense to Contempt

The forfeiture of bond or security is not a defense in a contempt proceeding.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 51, eff. Sept. 1, 1995.

SUBCHAPTER D. HEARING AND ENFORCEMENT ORDER

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, 1, eff. April 20, 1995.

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 ordering any other enforcement remedy, including rendering a money judgment, posting a bond or other security, or withholding income.

(c) A copy of the payment record attached to the motion is evidence of the facts asserted in the payment record and is admissible to show whether payments were made. The respondent may offer controverting evidence.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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.

(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 attorneys appointment to respond to the movants 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 movants pleadings and prepare for the hearing.

(h) The court may shorten or extend the time for preparation if the respondent and the respondents 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, 6.25, eff. Sept. 1, 1999.

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 respondents 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 respondents 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 17, eff. Sept. 1, 1999.

157.167. Respondent to Pay Attorneys 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 movants reasonable attorneys fees and all court costs in addition to the arrearages.

(b) For good cause shown, the court may waive the requirement that the respondent pay attorneys fees and costs if the court states the reasons supporting that finding.

(c) Fees and costs ordered under this section may be enforced by any means available for the enforcement of child support, including contempt.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 18, eff. Sept. 1, 1999.

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, 52, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 974, 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1034, 1, eff. Sept. 1, 1999.

SUBCHAPTER E. COMMUNITY SUPERVISION

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 and corrections department officer as directed;

(2) permit the community supervision and corrections department officer to visit the respondent at the respondents 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; and

(5) pay court costs and attorneys fees ordered by the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 946, 2, eff. Sept. 1, 1999.

157.212. Term of Community Supervision

The community supervision period may not exceed 10 years.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1313, 1, eff. Sept. 1, 1999.

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 in the special fund of the county treasury provided by the Code of Criminal Procedure to be used for community supervision.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

157.214. Motion to Revoke Community Supervision

A prosecuting attorney, the Title IVBD agency, 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, 1, eff. April 20, 1995.

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 respondents arrest by warrant.

(b) The respondent shall be brought promptly before the court ordering the arrest.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

157.216. Hearing on Motion to Revoke Community Supervision

(a) The court shall hold a hearing without a jury on or before the first 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 first working day after the date the court becomes available.

(b) The hearing under this section may not be held later than the third 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

SUBCHAPTER F. JUDGMENT AND INTEREST

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 5, eff. Sept. 1, 1997.

157.262. Reduction of Arrearages

(a) In a contempt proceeding or in rendering a money judgment, the court may not reduce or modify the amount of child support arrearages.

(b) The money judgment for arrearages rendered by the court may be subject to a counterclaim or offset as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

157.264. Enforcement by Income Withholding

A money judgment rendered as provided in this subchapter may be enforced by any means available for the enforcement of a judgment for debts and by an order requiring that income be withheld from the disposable earnings of the obligor.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 12 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 12 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 12 percent simple interest from the date the order is rendered until the judgment is paid.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 53, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 943, 1, eff. Jan. 1, 2000.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 943, 2, eff. Jan. 1, 2000.

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, 1, eff. April 20, 1995.

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) interest on the principal amounts specified in Subdivisions (4) and (5);
- (4) the principal amount of child support that has not been confirmed and reduced to money judgment; and
- (5) the principal amount of child support that has been confirmed and reduced to money judgment.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

157.269. Retention of Jurisdiction

A court that renders an order providing for the payment of child support arrearages retains jurisdiction until all current support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid.

Added by Acts 1995, 74th Leg., ch. 751, 54, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 19, eff. Sept. 1, 1999.

SUBCHAPTER G. CHILD SUPPORT LIEN

157.311. Definitions

In this subchapter:

- (1) "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.

(2) "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.

(3) "Lien" means a child support lien.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 19, eff. Sept. 1, 1997.

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:

(1) by operation of law against real and personal property of an obligor for all amounts of overdue support, regardless of whether the amounts have been adjudicated or otherwise determined, subject to the requirements of this subchapter for recording and notice; or

(2) when a court having continuing jurisdiction or, in a Title IV-D case, the Title IV-D agency determines an amount of arrears owed by a child support obligor.

(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 judgment or an administrative determination of arrears rendered after notice and opportunity for hearing.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 20, eff. Sept. 1, 1997.

157.313. Contents of Lien Notice

(a) A child support lien notice must contain:

(1) the style, docket number, and identity of the tribunal of this or another state having continuing jurisdiction of the child support action;

(2) the name, address, and, if available, the birth date, drivers license number, and social security number of the obligor;

(3) the name and social security number, if available, of the obligee and the child;

(4) 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;

(5) 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;

(6) the name and address of the person or agency asserting the lien; and

(7) the motor vehicle identification number as shown on the obligors title if the property is a motor vehicle.

(b) A claimant may include any other information that the claimant considers necessary.

(c) The lien notice must be verified.

(d) A claimant must file a notice for each after-acquired motor vehicle.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 21, eff. Sept. 1, 1997.

157.314. Filing Lien Notice or Abstract of Judgment

(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:

(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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 22, eff. Sept. 1, 1997.

157.315. Recording and Indexing Lien

(a) On receipt of a lien notice, the county clerk shall 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."

(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 lien. The lien release must be styled "Release of Child Support Lien."

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 595, 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 769, 1, eff. Sept. 1, 1999.

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 with the county clerk as provided by this subchapter.

(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 obligors title to the vehicle has been surrendered to the court or Title IV-D agency and the Texas Department of Transportation 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 23, eff. Sept. 1, 1997.

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 a depository account in a financial institution, including a mutual fund money market account, or a retirement plan, a claim for negligence, personal injury, or workers compensation, or an insurance award for the claim, owned by the obligor 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 filed with that party. Service of a lien notice on a financial institution relating to property held by the financial institution in the name of or on behalf of an obligor who is a customer of the financial institution is governed by Section 59.008, Finance Code.

(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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, 7.007, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, 20, eff. Sept. 1, 1999.

157.318. Duration and Effect of Child Support Lien

(a) A lien is effective until all current support and child support arrearages, including interest, have been paid or the lien is otherwise released as provided by¹ this subchapter.

(b) The lien secures payment of all child support arrearages² owed by the obligor under the underlying support order, including arrearages that accrue after the administrative or judicial determination of arrearages stated in the lien notice.

(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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 25, eff. Sept. 1, 1997.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 26, eff. Sept. 1, 1997.

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 clerks 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 vendors lien retained in a conveyance to the obligor.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 27, eff. Sept. 1, 1997.

157.321. Discretionary Release of Lien

A 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 28, eff. Sept. 1, 1997.

157.322. Mandatory Release of Lien

(a) On payment in full of the amount of child support due, together with any costs and reasonable attorneys fees, the claimant shall execute and deliver to the obligor or the obligors attorney a release of the child support lien.

(b) The release of lien is effective when filed with the county clerk with whom the lien notice or abstract of judgment was filed. A copy of the release of lien may be filed with any other individual or organization that may have been served with a lien notice under this subchapter.

(c) to (e) Repealed by Acts 1997, 75th Leg., ch. 911, 97(a), eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 29, 97(a), eff. Sept. 1, 1997.

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 or to dispute the amount of arrearages stated in the lien may be brought in the court of continuing jurisdiction or, if there is no court of continuing jurisdiction in this state, in the district court of the county in which the property is or was located and the lien was filed.

(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 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 attorneys fees;
- (2) order any official authorized to levy execution to satisfy the lien, costs, and attorneys 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 30, eff. Sept. 1, 1997.

157.324. Liability for Failure to Comply With Order or Lien

A person who knowingly disposes of property subject to a lien or who, after a foreclosure hearing, fails to surrender on demand nonexempt personal property as directed by a court or administrative order under this subchapter is liable to the claimant in an amount equal to the arrearages for which the foreclosure judgment was issued.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 12, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 31, eff. Sept. 1, 1997.

157.325. Release of Excess Funds to Debtor or Obligor

(a) If a person has in the persons possession earnings, deposits, accounts, or balances 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 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 13, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 32, eff. Sept. 1, 1997.

157.326. Interest of Obligors Spouse

(a) A spouse of an obligor may file an affidavit with the court of continuing jurisdiction or, if there is no court of continuing jurisdiction in this state, in the district court of the county in which the property is or was located and the lien was filed requesting that the court determine the extent, if any, of the spouses 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 obligors spouse, 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 obligors spouse. If the court finds that:

(1) the property is the separate property of the obligors spouse, the court shall order that the lien against the property be released and that any action to foreclose on the property be dismissed; or

(2) the property is jointly owned by the obligor and the obligors spouse, the court shall determine whether the sale of the obligors interest in the property would result in an unreasonable hardship on the obligors spouse or family and:

(A) if so, the court shall render an order that the obligors 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.

(c) In a proceeding under this section, the spouse 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 33, eff. Sept. 1, 1997.

SUBCHAPTER H. HABEAS CORPUS

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, attorneys 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

SUBCHAPTER I. CLARIFICATION OF ORDERS

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 courts 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

CHAPTER 158. WITHHOLDING FROM EARNINGS FOR CHILD SUPPORT

SUBCHAPTER A. INCOME WITHHOLDING REQUIRED; GENERAL PROVISIONS

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 34, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 35, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 21, eff. Sept. 1, 1999.

158.004. Withholding for Arrearages When no Current Support is Due.

If current support is no longer owed, the court or the Title IVBD 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 22, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 36, eff. Sept. 1, 1997.

158.007. Extension of Repayment Schedule by Court or Title IVBD Agency; Unreasonable Hardship

If the court or the Title IVBD agency finds that the schedule for discharging arrearages would cause the obligor, the obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 22, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

158.009. Maximum Amount Withheld From Earnings

An order or writ of withholding shall direct that any employer of the obligor withhold from the obligors disposable earnings the amount specified up to a maximum amount of 50 percent of the obligors disposable earnings.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 37, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 38, eff. Sept. 1, 1997.

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 obligors 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, 55, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 39, eff. Sept. 1, 1997.

SUBCHAPTER B. PROCEDURE

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, 1, eff. April 20, 1995.

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 attorneys fees and court costs, have been paid.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 40, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 23, eff. Sept. 1, 1999.

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 that is necessary for an employer or other entity to comply with the existing child support order, including:

- (1) the style, cause number, and court having continuing jurisdiction of the suit;
- (2) the name, address, and, if available, the social security number of the obligor;
- (3) the amount and duration of the child support payments and medical support payments or other provisions for medical support, the amount of arrearages, accrued interest, and ordered fees and costs;
- (4) the name, address, and, if available, the social security numbers of the child and the obligee;
- (5) the name and address of the person or agency to whom the payments shall be made;
- (6) the amount of income to be withheld and remitted; and
- (7) whether the child is to be enrolled in health insurance coverage available through the obligors employment.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 41, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 23, eff. Sept. 1, 1999.

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 IVBD 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 23, eff. Sept. 1, 1999.

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 obligors current employer or to any subsequent employer of the obligor.
- (b) In order to inform the employer, the clerk shall attach a copy of Subchapter C to the order or writ.
- (c) The clerk shall issue and mail 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.

(d) An order or judicial writ of withholding shall be delivered to the employer by certified or registered mail, return receipt requested, electronic 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 24, eff. Sept. 1, 1999.

158.106. Forms for Income Withholding

(a) The Title IVBD agency shall prescribe forms as authorized by federal law in a standard format entitled order or notice to withhold income for child support.

(b) The Title IVBD agency shall make the appropriate forms available to obligors, obligees, domestic relations offices, friends of the court, and private attorneys.

(c) The Title IVBD agency may prescribe additional forms for the efficient collection of child support and to promote the administration of justice for all parties.

(d) The forms prescribed by the Title IVBD agency under this section may be used to request voluntary withholding under Section 158.011.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 25, eff. Sept. 1, 1999.

SUBCHAPTER C. RIGHTS AND DUTIES OF EMPLOYER

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 43, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 44, eff. Sept. 1, 1997.

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) For payments made by electronic funds transfer or electronic data interchange, the employer shall transmit the amount withheld not later than the second business day after the pay date.

(c) The employer shall include with each payment transmitted:

(1) the number assigned by the Title IVBD 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 a local registry, the Title IVBD agency, or to the state disbursement unit.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 8, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 556, 26, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 859, 1, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 45, eff. Sept. 1, 1997.

158.206. Liability and Obligation of Employer for Payments

(a) An employer receiving an order or a writ of withholding under this chapter, including an order or writ directing that health 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 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 attorneys fees and court costs.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 4.07, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 46, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 859, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1580, 1, eff. Sept. 1, 1999.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 47, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

158.209. Employers 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 attorneys fees and court costs incurred in enforcing the employees 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 48, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 27, eff. Sept. 1, 1999.

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 IVBD agency and the obligee of that fact not later than the seventh day after the date employment terminated and shall provide the obligors last known address and the name and address of the obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 28, eff. Sept. 1, 1999.

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, 29, eff. Sept. 1, 1999.

SUBCHAPTER D. JUDICIAL WRIT OF WITHHOLDING ISSUED BY CLERK

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 57, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 50, eff. Sept. 1, 1997.

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, 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 obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 51, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 58, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 52, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 53, eff. Sept. 1, 1997.

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 obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 54, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 55, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 56, eff. Sept. 1, 1997.

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 and interest; or

(2) grant the motion to stay.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 59, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 57, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 58, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 59, eff. Sept. 1, 1997.

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, the amount of arrearages, and the amount to be withheld from the obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 30, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 obligors disposable income for current child support, including medical 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 61, eff. Sept. 1, 1997.

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 obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 62, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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 obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 63, eff. Sept. 1, 1997.

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, 60, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 64, eff. Sept. 1, 1997.

SUBCHAPTER E. MODIFICATION, REDUCTION, OR TERMINATION OF WITHHOLDING

158.401. Modifications to or Termination of Withholding by Title IVBD Agency

(a) The Title IVBD 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 IVBD 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 obligors 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 65, eff. Sept. 1, 1997.

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, 61, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 66, eff. Sept. 1, 1997.

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, 61, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995. Renumbered from 158.402 by Acts 1995, 74th Leg., ch. 751, 61, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995. Renumbered from 158.403 by Acts 1995, 74th Leg., ch. 751, 61, eff. Sept. 1, 1995.

SUBCHAPTER F. ADMINISTRATIVE WRIT OF WITHHOLDING IN TITLE IV-D CASES

158.501. Issuance of Administrative Writ of Withholding by Title IVBD Agency

(a) The Title IVBD 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) The Title IVBD agency is the only entity that may issue an administrative writ under this subchapter.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 31, eff. Sept. 1, 1999.

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 IVBD agency at any time until all current support, including medical support, and child support arrearages have been paid. The writ issued under this subsection may be based on an obligation in more than one support order.

(b) The Title IVBD 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 IVBD agency may issue an administrative writ of withholding as a reissuance of an existing withholding order on file with the court of continuing jurisdiction. The administrative writ under this subsection is not subject to the contest provisions of Sections 158.505(a)(2) and 158.506.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 31, eff. Sept. 1, 1999.

158.503. Delivery of Administrative Writ to Employer; Filing With Court

(a) An administrative writ of withholding issued under this subchapter may be delivered to an obligor, obligee, and employer by mail or by electronic transmission.

(b) Not later than the third business day after the date of delivery of the administrative writ of withholding to an employer, the Title IVBD agency shall file a copy of the writ, together with a signed certificate of service, in the court of continuing jurisdiction. The certificate of service 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.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 32, eff. Sept. 1, 1999.

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 comply with the existing support order, including the amount of current support and medical support, the amount of arrearages, accrued interest, and the amount of earnings to be withheld.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 33, eff. Sept. 1, 1999.

158.505. Notice to Obligor

(a) On issuance of an administrative writ of withholding, the Title IVBD agency shall send the obligor:

- (1) notice that the withholding has commenced;
- (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 obligors last known address; or
- (3) service of citation as in civil cases generally.

(c) Repealed by Acts 1999, 76th Leg., ch. 556, 81, eff. Sept. 1, 1999.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 34, 81, eff. Sept. 1, 1999.

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 IVBD agency to resolve any issue in dispute regarding the identity of the obligor or the existence or amount of arrearages. The Title IVBD 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 is entitled to the remedies provided by Section 158.317 for cases in which a notice of an application for judicial writ of withholding was not received. The obligor may file a motion with the court to withdraw the administrative writ 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.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 35, eff. Sept. 1, 1999.

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 child support arrearages have been paid.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997.

158.508. Interstate Request for Income Withholding

An administrative writ of withholding may be issued in a Title IV-D interstate case on registration of a foreign support order as provided in Chapter 159.

Added by Acts 1997, 75th Leg., ch. 911, 67, eff. Sept. 1, 1997.

CHAPTER 159. UNIFORM INTERSTATE FAMILY SUPPORT ACT

SUBCHAPTER A. CONFLICTS BETWEEN PROVISIONS

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, 1, eff. April 20, 1995.

SUBCHAPTER B. GENERAL PROVISIONS

159.101. 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.
- (3) "Duty of support" means an obligation imposed or imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
- (4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months 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 in which the child lived with a parent or a person acting as parent from the time of birth. A period of temporary absence of any of them is counted as part of the six-month or other period.
- (5) "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.
- (6) "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.
- (7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
- (8) "Initiating tribunal" means the authorized tribunal in an initiating state.
- (9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.
- (10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.
- (11) "Law" includes decisional and statutory law and rules and regulations having the force of law.
- (12) "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 has been issued or a judgment determining parentage has been rendered;
 - (B) a state or political subdivision 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; or
 - (C) an individual seeking a judgment determining parentage of the individual's child.
- (13) "Obligor" means an individual or the estate of a decedent:
- (A) who owes or is alleged to owe a duty of support;

(B) who is alleged but has not been adjudicated to be a parent of a child; or

(C) who is liable under a support order.

(14) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(19) "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:

(A) an Indian tribe; and

(B) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) "Support enforcement agency" means a public official or agency authorized to seek:

(A) enforcement of support orders or laws relating to the duty of support;

(B) establishment or modification of child support;

(C) determination of parentage; or

(D) the location of obligors or their assets.

"Support enforcement agency" does not include a domestic relations office unless that office has entered into a cooperative agreement with the Title IVBD agency to perform duties under this chapter.

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse that provides for monetary support, health care, arrearages, or reimbursement and may include related costs and fees, interest, income withholding, attorneys fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 1, eff. Sept. 1, 1997.

159.102. Tribunal of State

The court is the tribunal of this state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 2, eff. Sept. 1, 1997.

159.103. Remedies Cumulative

Remedies provided in this chapter are cumulative and do not affect the availability of remedies under other law.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER C. JURISDICTION

159.201. Bases for Jurisdiction Over Nonresident

In a proceeding to establish, enforce, or modify a support order or to determine parentage, 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, 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 in the paternity registry maintained in this state by the bureau of vital statistics; or
- (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 5, eff. Sept. 1, 1997.

159.202. Procedure When Exercising Jurisdiction Over Nonresident

A tribunal of this state exercising personal jurisdiction over a nonresident under Section 159.201 may apply Section 159.316 to receive evidence from another state and Section 159.318 to obtain discovery through a

tribunal of another state. In all other respects, Subchapters DBH do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 another state and as a responding tribunal for proceedings initiated in another state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 3, eff. Sept. 1, 1997.

159.204. Simultaneous Proceedings in Another State

(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 only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state; 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 if:

(1) the petition or comparable pleading in the other state 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 is the home state of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.205. Continuing, Exclusive Jurisdiction

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state under a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state under a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that issued a child support order under a law substantially similar to this chapter.

(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) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 4, eff. Sept. 1, 1997.

159.206. Enforcement and Modification of Support Order by Tribunal Having Continuing Jurisdiction

(a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the tribunals continuing, exclusive jurisdiction no longer resides in the issuing state, in subsequent proceedings the tribunal may apply Section 159.316 to receive evidence from another state and Section 159.318 to obtain discovery through a tribunal of another state.

(c) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.207. Recognition 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 so 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 or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) if only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized;

(2) if more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized; and

(3) if none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order that controls and must be so recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under Subsection (b). The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under Subsection (a), (b), or (c) is the tribunal that has continuing, exclusive jurisdiction under Section 159.205.

(e) A tribunal of this state that determines by order the identity of the controlling order under Subsection (b)(1) or (2) or that issues a new controlling order under Subsection (b)(3) shall state in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. 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 controlling order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 5, eff. Sept. 1, 1997.

159.208. Multiple Child Support Orders for Two or More Obligees

In responding to multiple 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, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.209. Credit for Payments

Amounts collected and credited for a particular period under a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER D. CIVIL PROVISIONS OF GENERAL APPLICATION

159.301. Proceedings Under Chapter

(a) Except as otherwise provided in this chapter, this subchapter applies to all proceedings under this chapter.

(b) This chapter provides for the following proceedings:

(1) establishment of an order for spousal support or child support pursuant to Section 159.401;

(2) enforcement of a support order and income-withholding order of another state without registration pursuant to Sections 159.501 through 159.507;

(3) registration of an order for spousal support or child support of another state for enforcement pursuant to Sections 159.601 through 159.608;

(4) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to Sections 159.203 through 159.205;

(5) registration of an order for child support of another state for modification pursuant to Sections 159.609 through 159.614;

(6) determination of parentage pursuant to Section 159.701; and

(7) assertion of jurisdiction over nonresidents pursuant to Sections 159.201 and 159.202.

(c) An individual or a support enforcement agency may commence 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 that has or that can obtain personal jurisdiction over the respondent.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 6, eff. Sept. 1, 1997.

159.302. Action 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, 1, eff. April 20, 1995.

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, including the rules on choice of 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 7, eff. Sept. 1, 1997.

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 three copies of 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 a responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to that Act, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 8, eff. Sept. 1, 1997.

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 otherwise authorized by law, may do one or more of the following:

(1) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) order an obligor to comply with a support order and specify 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 obligors property;

(8) order an obligor to keep the tribunal informed of the obligors current residential 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 attorneys 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 9, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 10, eff. Sept. 1, 1997.

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 that provides services to the petitioner as appropriate shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state 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) not later than the second day, excluding Saturdays, Sundays, and legal holidays, after the date of receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) not later than the second day, excluding Saturdays, Sundays, and legal holidays, after the date of receipt of a written communication from the respondent or the respondents attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 11, eff. Sept. 1, 1997.

159.308. Duty of Attorney General

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

159.310. Duties of State Information Agency

(a) The Title IVBD 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 send a copy to the state information agency of every other state;

(2) maintain a register of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the place in this state where the individual obligee or the obligor resides, or where the obligors property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligors 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 obligors 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, drivers licenses, and social security.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.311. Pleadings and Accompanying Documents

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the 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 and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. 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, 1, eff. April 20, 1995.

159.312. Nondisclosure of Information in Exceptional Circumstances

On a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 may assess against an obligor filing fees, reasonable attorneys fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligees witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating state or the responding state, except as provided by other law. Attorneys fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorneys 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 attorneys fees if it determines that a hearing was requested primarily for delay. In a proceeding pursuant to Sections 159.601 through 159.608, 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 12, eff. Sept. 1, 1997.

159.314. Limited Immunity of Petitioner

(a) Participation by a petitioner in a proceeding 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 present in this state to participate in the proceeding.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

159.316. Special Rules of Evidence and Procedure

(a) The physical presence of the petitioner in a responding 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.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in the petition, affidavit, or document, not excluded under the hearsay rule if given in person, are admissible in evidence if given under oath by a party or witness residing in another 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 and for prenatal and postnatal health care of the mother and child that are furnished to the adverse party not less than 10 days before the date of 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 sent from another state to a tribunal of this state by telephone, telecopier, or another means that does not provide an original writing 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 may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with a tribunal of another state 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.317. Communications Between Tribunals

A tribunal of this state may communicate with a tribunal of another state in writing, by telephone, or by another means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.318. Assistance With Discovery

A tribunal of this state may:

- (1) request a tribunal of another 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 of another state.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.319. Receipt and Disbursement of Payments

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 a certified statement by the custodian of the record of the amounts and dates of all payments received.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER E. ESTABLISHMENT OF SUPPORT ORDER

159.401. Petition to Establish Support Order

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

- (1) the individual seeking the order resides in another state; or
- (2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

- (1) the respondent has signed a verified statement acknowledging parentage;

(2) the respondent has been determined by or under law to be the parent; or

(3) there is other clear and convincing evidence that the respondent is the child's parent.

(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, 1, eff. April 20, 1995.

SUBCHAPTER F. ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

159.501. Employers Receipt of Income-Withholding Order of Another State

An income-withholding order issued in another state may be sent to 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, 13, eff. Sept. 1, 1997.

159.502. Employers 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 or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payments, stated as a sum certain, or ordering the obligor to provide health 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, 13, eff. Sept. 1, 1997.

159.503. Compliance With Multiple Income-Withholding Orders

If an obligors employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligors principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

Added by Acts 1997, 75th Leg., ch. 607, 13, eff. Sept. 1, 1997.

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 employers withholding of child support from the obligors income.

Added by Acts 1997, 75th Leg., ch. 607, 13, eff. Sept. 1, 1997.

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, 13, eff. Sept. 1, 1997.

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 in the same manner as if the order had been issued by a tribunal of this state. Section 159.604 applies to the contest.

(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; and
- (3) the person or agency designated to receive payments in the income-withholding order or to the obligee, if no person or agency is designated.

Added by Acts 1997, 75th Leg., ch. 607, 13, eff. Sept. 1, 1997.

159.507. Administrative Enforcement of Orders

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state 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, 13, eff. Sept. 1, 1997.

SUBCHAPTER G. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

159.601. Registration of Order for Enforcement

A support order or income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.602. Procedure to Register Order for Enforcement

(a) A support order or income-withholding order of another state may be registered in this state by sending 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 all orders to be registered, including any modification of an order;
- (3) a sworn statement by the party seeking 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 obligors address and social security number;
 - (B) the name and address of the obligors 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) the name and address of the obligee and, if applicable, the agency or 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 a foreign judgment, 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.603. Effect of Registration for Enforcement

- (a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.
- (b) A registered order issued in another state 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 order if the issuing tribunal had jurisdiction.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.604. Choice of Law

- (a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.
- (b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever statute of limitation is longer, applies.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 14, eff. Sept. 1, 1997.

159.605. Notice of Registration of Order

- (a) When a support order or income-withholding order issued in another state is registered, the registering tribunal 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) The 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;
 - (3) that failure to contest the validity or enforcement of the registered order in a timely manner:
 - (A) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and
 - (B) precludes further contest of that order with respect to any matter that could have been asserted; and
 - (4) of the amount of any alleged arrearages.
- (c) On registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligors employer under Chapter 158.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 15, eff. Sept. 1, 1997.

159.606. Procedure to Contest Validity or Enforcement of Registered Order

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek under Section 159.607 to:

- (1) vacate the registration;
- (2) assert any defense to an allegation of noncompliance with the registered order; or
- (3) contest the remedies being sought or the amount of any alleged arrearages.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered 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 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 16, eff. Sept. 1, 1997.

159.607. Contest of Registration or Enforcement

(a) A party contesting the validity or enforcement of a registered 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; or
- (7) the statute of limitation under Section 159.604 precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under Subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered 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 order, the registering tribunal shall issue an order confirming the order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.608. Confirmed Order

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 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 159.601B-159.604 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, 1, eff. April 20, 1995.

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 order may be modified only if the requirements of Section 159.611 have been met.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.611. Modification of Child Support Order of Another State

(a) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify the order only if Section 159.613 does not apply and after notice and hearing the tribunal finds that:

(1) the following requirements are met:

(A) the child, the individual obligee, 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) 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 in the issuing tribunal written consents for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order; however, for the purposes of this subdivision, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(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. If two or more tribunals have issued child support orders for the same obligor and 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) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

(e) Not later than the 30th day after the date a modified child support order is issued, the party obtaining the modification shall file a certified copy of the order:

(1) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

(2) in each tribunal in which the party knows that the earlier order has been registered.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 607, 17, eff. Sept. 1, 1997.

159.612. Recognition of Order Modified in Another State

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction under a law substantially similar to this chapter and, except as otherwise provided in this chapter, shall on request:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of the order;

(3) provide other appropriate relief only for a violation of the order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, on registration, for the purpose of enforcement.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 states 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 Sections 159.101 through 159.209 and 159.601 through 159.614 and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 159.301 through 159.507 and 159.701 through 159.802 do not apply.

Added by Acts 1997, 75th Leg., ch. 607, 18, eff. Sept. 1, 1997.

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, 18, eff. Sept. 1, 1997.

SUBCHAPTER H. DETERMINATION OF PARENTAGE

159.701. Proceeding to Determine Parentage

(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply the procedural and substantive law of this state and the rules of this state on choice of law.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER I. INTERSTATE RENDITION

159.801. Grounds for Rendition

(a) In 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 by 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, 1, eff. April 20, 1995.

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 may require a prosecutor of this state to demonstrate:

(1) that not less than 60 days before the date of the demand, the obligee had initiated proceedings for support under this chapter; or

(2) that initiating the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, 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, 1, eff. April 20, 1995.

SUBCHAPTER J. MISCELLANEOUS PROVISIONS

159.901. Uniformity of Application and Construction

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

159.902. Short Title

This chapter may be cited as the Uniform Interstate Family Support Act.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

CHAPTER 160. DETERMINATION OF PARENTAGE

SUBCHAPTER A. GENERAL PROVISIONS

160.001. Applicability

This chapter governs a suit affecting the parent-child relationship in which the parentage of the biological mother or biological father is:

- (1) sought to be adjudicated;
- (2) voluntarily admitted by the putative father; or
- (3) jointly acknowledged by the mother and putative father.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 36, eff. Sept. 1, 1999.

160.002. Time in Which to Bring Suit to Determine Parentage

(a) A suit affecting the parent-child relationship to determine parentage under Subchapter B may be brought before the birth of the child, but must be brought on or before the second anniversary of the date the child becomes an adult, or the suit is barred.

(b) This section applies to a child for whom a parentage suit was brought but dismissed because a statute of limitations of less than 18 years was then in effect.

(c) Repealed by Acts 1999, 76th Leg., ch. 556, 81, eff. Sept. 1, 1999.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 81, eff. Sept. 1, 1999.

160.003. Necessary Party: Representation of Child

(a) The child is not a necessary party to a suit under this chapter.

(b) It is rebuttably presumed in a trial on the merits before a judge or jury that the interests of the child will be adequately represented by the party bringing suit to determine parentage of the child. If the court finds that the interests of the child will not be adequately represented by a party to the suit or are adverse to that party, the court shall appoint an attorney ad litem to represent the child.

(c) The child shall be represented in a settlement agreement, dismissal, or nonsuit by a guardian ad litem or an attorney ad litem appointed by the court, unless the court finds on the record that the interests of the child will be adequately represented by a party to the suit or are not adverse to that party, and that the court approves the settlement agreement, dismissal, or nonsuit.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.004. Temporary Orders

The court may render a temporary order authorized in a suit under this title, including an order for temporary support of a child, if the person ordered to pay support:

(1) is a presumed parent under Chapter 151;

(2) is an alleged father petitioning to have his paternity adjudicated or who admits paternity in pleadings filed with the court;

(3) is found by the court at the pretrial conference authorized by this chapter not to be excluded as the biological father of the child, with the court finding that at least 99 percent of the male population is excluded from being the biological father of the child; or

(4) executed a statement or acknowledgment of paternity under Subchapter C.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 36, eff. Sept. 1, 1999.

160.005. Conservatorship, Support, and Payments

- (a) In a suit in which a determination of parentage is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child.
- (b) On a finding of parentage, the court may order support retroactive to the time of the birth of the child and, on a proper showing, may order a party to pay an equitable portion of all prenatal and postnatal health care expenses of the mother and child.
- (c) In making 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 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.006. Final Order Regarding Parentage

- (a) On a verdict of the jury, or on a finding of the court if there is no jury, the court shall render a final order declaring whether an alleged parent is the biological parent of the child.
- (b) The effect of an order declaring that an alleged parent is the biological parent of the child is to confirm or create the parent-child relationship between the parent and the child for all purposes.
- (c) If parentage is established, the order shall state the name of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.007. Suit Barred

- (a) Except as provided by Subsection (b), a suit under this chapter with respect to a child is barred if final judgment has been rendered by a court of competent jurisdiction:
 - (1) adjudicating a named individual to be the biological father of the child; or
 - (2) terminating the parent-child relationship between the child and each living parent of the child; or
 - (3) granting a petition for the adoption of the child.
- (b) During the pendency of an appeal or direct attack on a judgment described by Subsection (a), a suit under this chapter may be filed but shall, on motion of a party, be stayed pending the final disposition of the appeal or direct attack on the judgment.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER B. PARENTAGE SUIT

160.101. Denial of Paternity

- (a) The presumption that a man is the biological father of a child under Chapter 151 may be contested by:
 - (1) the biological mother of the child;

(2) a person related within the second degree of consanguinity to the biological mother of the child, if the biological mother of the child is deceased;

(3) a man presumed to be the father of the child, who may contest his own or another mans presumed paternity;

(4) a man alleging himself to be the biological father of the child; or

(5) a governmental entity, authorized agency, or a licensed child-placing agency.

(b) A contest of paternity must be raised by an express statement denying paternity of the child in a partys pleadings in the suit, without regard to whether the presumed father or biological mother is a petitioner or respondent.

(c) In a suit in which a question of paternity is raised, the court shall conduct the pretrial proceedings and order scientifically accepted paternity testing as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 62, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 962, 1, eff. Sept. 1, 1997.

160.102. Order for Parentage Testing

(a) When the respondent appears in a parentage suit, the court shall order the mother, an alleged father, and the child to submit to the taking of blood, body fluid, or tissue samples for the purpose of scientifically accepted parentage testing.

(b) If the respondent fails to appear and wholly defaults or if the allegation of parentage is admitted, the court may waive parentage testing.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.103. Requirements of Testing

The court shall require in its order testing necessary to ascertain the possibility of an alleged fathers paternity and shall require that the tests exclude at least 99 percent of the male population from the possibility of being the father of the child, except that the court shall permit the omission of any further testing if the testing has been conducted sufficiently to establish that an alleged father is not the father of the child, or if the costs of testing have reached an amount that the court determines to be the greatest amount that may reasonably be borne by one or more parties to the suit. If the appearance is before the birth of the child, the court shall order the taking of blood, body fluid, or tissue samples to be made as soon as medically practical after the birth.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.104. Appointment of Experts

(a) The court shall:

(1) appoint one or more experts qualified in parentage testing to perform the tests;

(2) determine the number and qualifications of the experts; and

(3) prescribe the arrangements for conducting the tests.

(b) The court may:

(1) order a reasonable fee for each court-appointed expert; and

(2) require the fee to be paid by any or all of the parties in the amounts and in the manner directed or tax all, part, or none of the fee as costs in the suit.

(c) A party may employ other experts qualified in parentage testing. The court may order blood, body fluid, or tissue samples made available to these experts if requested.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.105. Pretrial Conference

(a) After completion of parentage testing, the court shall order all parties to appear, either in person or by attorney, at a pretrial conference.

(b) Either party may call a parentage testing expert to testify in person or by deposition about the experts tests and findings.

(c) A witness at a pretrial conference is governed by the Texas Rules of Civil Evidence.

(d) A verified written report of a parentage testing expert is admissible at the pretrial conference as evidence of the truth of the matters it contains.

(e) All evidence admitted at the pretrial conference is a part of the record of the case.

(f) Parentage test results offered at a pretrial conference are admissible as evidence if the tests were conducted under a court order or by agreement without regard to whether the tests were performed before or after the filing of a suit.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.106. Effect of Parentage Tests

(a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that an alleged or presumed father is not the father of the child, the court shall dismiss with prejudice the parentage suit as to that man.

(b) If the court finds that the parentage tests do not exclude an alleged father as the father of the child, the court shall set the suit for trial.

(c) If the court finds that at least 99 percent of the male population is excluded by the tests and that an alleged father is not excluded from the possibility of being the child's father, the burden of proof at trial is on the party opposing the establishment of the alleged father's parentage.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.107. Effect of Refusing Parentage Testing

(a) An order for parentage testing is enforceable by contempt and:

(1) if the petitioner is the mother or an alleged father and refuses to submit to parentage testing, the court may dismiss the suit; or

(2) if a party refuses to submit to court-ordered parentage testing, on proof sufficient to render a default judgment the court may resolve the question of parentage against that party.

(b) If a parent or an alleged parent refuses to submit to parentage testing, the fact of refusal may be introduced as evidence as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.108. Preferential Trial Setting

(a) In a suit provided by this chapter, after a hearing the court shall grant a motion for a preferential setting for trial on the merits filed by a party to the suit or by the attorney or guardian ad litem for the child. The court shall give precedence to that trial over other civil cases if 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.

(b) The provisions of this section regarding preferential setting apply to trial on the merits without regard to whether the suit is set for a trial before the court or before a jury.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.109. Evidence at Trial

(a) A party may call a parentage testing expert to testify at the trial in person or by deposition.

(b) A verified written report of a parentage testing expert is admissible at the trial as evidence of the truth of the matters it contains.

(c) If the parentage tests show the possibility of an alleged fathers paternity, the court shall admit this evidence if offered at the trial.

(d) Parentage test results offered at the trial shall be admissible as evidence if the tests were conducted under court order or by agreement, without regard to whether the tests were performed before or after the filing of a suit.

(e) The party seeking to establish an alleged fathers paternity retains the right to open and close at trial without regard to whether the court has shifted the burden of proof to the opposing party.

(f) If a copy is provided to the adverse party and to the court at the pretrial conference, submission of a copy of a medical bill for the prenatal and postnatal health care expenses of the mother and child or for charges directly related to the parentage testing constitutes a prima facie showing that the charges are reasonable, necessary, and customary and may be admitted as evidence of the truth of the matters stated in the bill.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

160.110. Presumptions; Burden of Proof

(a) In a suit in which there is a presumption of parentage under Chapter 151, the party denying a presumed father's paternity of the child has the burden of rebutting the presumption of paternity by clear and convincing evidence.

(b) If the parentage tests show the possibility of an alleged father's paternity and that at least 99 percent of the male population is excluded from the possibility of being the father, evidence of these facts constitutes a prima facie showing of an alleged father's paternity, and the party opposing the establishment of the alleged father's paternity has the burden of proving that the alleged father is not the father of the child.

(c) A party who refuses to submit to parentage testing has the burden of proving that an alleged father is not the father of the child.

(d) The court shall dismiss with prejudice a claim regarding a presumed father whose paternity is excluded by scientifically accepted paternity testing.

(e) If two or more presumptions are in conflict, the presumption that is founded on the weightier considerations of policy and logic controls. The court shall find that the weightier presumption of paternity is that of a presumed father who is not excluded as the biological father of the child by scientifically accepted paternity testing that shows that at least 99 percent of the male population is excluded.

(f) The court shall dismiss a suit contesting a presumption of paternity filed by a man who is not a presumed father, but who alleges himself to be the biological father of a child, if:

(1) the suit is filed after the second anniversary of the later of:

(A) the date of birth of the child; or

(B) the time the presumption of paternity came into existence after the child was born; and

(2) the presumed father:

(A) has resided in the same household as the child in a father-child relationship or has established a father-child relationship with the child through his other actions; and

(B) requests an order designating him as the father of the child.

(g) A suit contesting a presumption that a man is the biological father of a child may be filed at any time during the minority of the child by:

(1) the biological mother of the child;

(2) a person related within the second degree of consanguinity to the biological mother of the child, if the biological mother of the child is deceased;

(3) a presumed father; or

(4) a governmental entity, authorized agency, or licensed child-placing agency.

(h) If a presumption of paternity is rebutted, the court shall enter an order finding that the man presumed to be the father of the child is not the biological father.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 63, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 962, 2, eff. Sept. 1, 1997.

SUBCHAPTER C. ACKNOWLEDGMENT OR DENIAL OF PATERNITY

160.201. Voluntary Acknowledgment Of Paternity

The mother of a child and a man claiming to be the father of the child may execute an acknowledgment of paternity as provided by this subchapter to establish the mans paternity.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 64, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.202. Execution of Acknowledgment of Paternity

(a) An acknowledgment of paternity must:

(1) be in writing;

(2) be signed by the mother and the putative father; and

(3) state whether the child whose paternity is being acknowledged has a presumed father under Section 151.002.

(b) If the mother declares in the acknowledgment that there is a presumed father of the child, the acknowledgment must be accompanied by a denial of paternity signed by the presumed father, unless the presumed father is the man who has signed the acknowledgment.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 64, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.203. Filing Acknowledgment of Paternity

(a) An acknowledgment of paternity executed under this subchapter shall be filed with the bureau of vital statistics.

(b) The bureau of vital statistics may not charge a fee to file the acknowledgment.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 64, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.204. Signing of Acknowledgment or Denial of Paternity

(a) An acknowledgment of paternity or a denial of paternity may contain the mothers signature and the putative fathers signature on separate documents.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) An adult or a minor may sign an acknowledgment of paternity or a denial of paternity.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Renumbered from 160.205 by Acts 1995, 74th Leg., ch. 751, 64, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.205. Effect of Acknowledgment of Paternity

(a) Subject to the right to rescind or contest an acknowledgment of paternity under this subchapter, a signed acknowledgment of paternity filed with the bureau of vital statistics is a legal finding of paternity of a child equivalent to a judicial determination.

(b) If the mother or the man claiming to be the father falsely denies the existence of a presumed father in an acknowledgment of paternity, the acknowledgment of paternity is voidable within the time to rescind under Section 160.206 .

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Renumbered from 160.206 by Acts 1995, 74th Leg., ch. 751, 64, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.206. Suit to Rescind Acknowledgment or Denial

(a) Subject to the requirements of Subsection (b), a person who signs an acknowledgment of paternity or a denial of paternity may file a suit affecting the parent-child relationship to rescind the acknowledgment of paternity or denial of paternity.

(b) The petition to rescind an acknowledgment of paternity or a denial of paternity must be filed not later than the earlier of:

(1) the 61st day after the date the acknowledgment of paternity or denial of paternity is filed with the bureau of vital statistics; or

(2) the date of the first hearing before a tribunal to determine an issue relating to the child in which the person is a party, including a proceeding that establishes support.

(c) If a proceeding to rescind an acknowledgment of paternity or a denial of paternity is filed jointly or agreed to by all necessary parties, the court shall order the bureau of vital statistics to amend the birth record of the child by removing the fathers name.

(d) If the proceeding to rescind is not agreed to by all parties, the court shall conduct a hearing in the same manner as a proceeding to determine parentage under this chapter.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.207. Suit to Contest Acknowledgment or Denial

(a) A person who may contest a presumption of paternity under Section 160.101 may contest an acknowledgment of paternity or a denial of paternity by filing a suit affecting the parent-child relationship. A suit to contest an acknowledgment of paternity or a denial of paternity that is filed after the time for a suit to rescind under Section 160.206 may be filed only on the basis of fraud, duress, or material mistake of fact. The party challenging the acknowledgment of paternity or the denial of paternity has the burden of proof.

(b) A suit to contest an acknowledgment of paternity or a denial of paternity shall be conducted in the same manner as a proceeding to determine parentage under this chapter.

(c) A person must bring suit to contest an acknowledgment of paternity or a denial of paternity not later than the fourth anniversary of the date the acknowledgment of paternity or the denial of paternity is filed with the bureau of vital statistics.

(d) A suit to contest an unrescinded acknowledgment of paternity may not be filed after the date a court has rendered an order, including a child support order, based on the acknowledgment of paternity.

(e) Notwithstanding any other provision of this chapter, a collateral attack on an acknowledgment of paternity executed under this subchapter may not be filed after the fourth anniversary of the date the acknowledgment of paternity is filed with the bureau of vital statistics.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.208. Procedure for Suit to Rescind or Contest

(a) Each person who signs an acknowledgment of paternity or a denial of paternity must be made a party to a suit to rescind or contest the acknowledgment of paternity or denial of paternity.

(b) Except for good cause shown, the court may not suspend the legal responsibility of a person arising from the acknowledgment of paternity, including the duty to pay child support, while a suit is pending.

(c) On a determination of paternity or nonpaternity, the court shall order the bureau of vital statistics to amend the birth record of the child in accordance with the order of the court.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.209. Court Ratification

An unrescinded and uncontested acknowledgment of paternity is valid and effective without court ratification. In a judicial, administrative, or other proceeding, parentage of a child may be proved by evidence that an unrescinded and uncontested acknowledgment of paternity of the child has been filed with the bureau of vital statistics.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.210. Full Faith and Credit

An acknowledgment of paternity signed in another state shall be accorded full faith and credit by the courts of this state if the acknowledgment is signed in apparent compliance with the other states law.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.211. Validation of Earlier Statement

A statement admitting paternity or an obligation to support a child that was signed before September 1, 1999, is valid and binding even though the statement is not executed as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.212. Forms for Acknowledgment and Denial of Paternity

(a) The bureau of vital statistics shall prescribe forms for an acknowledgment of paternity and a denial of paternity to comply with this subchapter.

(b) The forms prescribed under this section must:

- (1) contain information regarding the procedure to rescind an acknowledgment or a denial;
- (2) provide that the signatures on the forms are witnessed and signed under penalty of perjury; and
- (3) state whether the mother, the putative father, or the presumed father is a minor.

(c) The form for acknowledgment of paternity must inform the putative father that signing the acknowledgment of paternity with the consent of the mother:

- (1) creates the parent-child relationship between him and the child;
- (2) imposes upon him a legal duty to support the child; and
- (3) enables a court to grant him the right of custody or visitation with the child.

(d) The form for denial of paternity must inform the man that signing the denial of paternity with the consent of the mother:

- (1) legally determines his nonpaternity of the child;
- (2) removes the legal duty that he support the child; and
- (3) terminates his right of conservatorship or possession of or access to the child.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.213. Validity of Forms

The validity of an acknowledgment of paternity or a denial of paternity is not affected by a modification of the prescribed form by the bureau of vital statistics that occurs after the acknowledgment of paternity or denial of paternity is signed if the form met the requirements of state law at the time it was signed.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.214. Release of Information

The bureau of vital statistics shall release information relating to the acknowledgment or denial of paternity and rescinding an acknowledgment or a denial of paternity to the Title IVBD agency and any other person authorized by law.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.215. Adoption of Rules

The Title IVBD agency and the bureau of vital statistics may adopt rules to implement this subchapter.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

160.216. Memorandum of Understanding

The Title IVBD agency and the bureau of vital statistics shall adopt a memorandum of understanding governing the collection and transfer of information for the voluntary acknowledgment of paternity. The Title IVBD agency and the bureau of vital statistics shall review the memorandum semiannually and renew or modify the memorandum as necessary.

Added by Acts 1999, 76th Leg., ch. 556, 37, eff. Sept. 1, 1999.

SUBCHAPTER D. PATERNITY REGISTRY

160.251. Paternity Registry; Purpose

- (a) The bureau of vital statistics shall establish a paternity registry.
- (b) The bureau of vital statistics shall administer the registry to:
 - (1) protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered; and
 - (2) expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.
- (c) The registry does not relieve a mother of the obligation to identify the known father of her child.
- (d) A man is not required to register with the paternity registry if he:
 - (1) is presumed to be the biological father of a child under Chapter 151;
 - (2) has been adjudicated to be the biological father of a child by a court of competent jurisdiction; or
 - (3) has filed an acknowledgment of paternity under Subchapter C.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 38, eff. Sept. 1, 1999.

160.252. Required Information

A man registering with the registry shall provide:

- (1) the name, last known address, drivers license number, and social security number, if known, of the mother of the child;
- (2) the name of the child and the location and date of birth of the child, if known, or the probable month and year of the expected birth of the child;
- (3) the mans name, address, drivers license number, and social security number; and
- (4) a statement in which the man claims to be the father of the child identified by the man.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.253. Information Maintained by Registry

The registry shall record the name, address, drivers license number, and social security number of a man who claims to be the father of a child whose paternity has not been adjudicated by a court of competent jurisdiction by giving notice of intent to claim paternity, as provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.254. Knowledge of Pregnancy

- (a) A person who has sexual intercourse with a person of the opposite sex is deemed to have knowledge that sexual intercourse can result in the womans pregnancy.
- (b) Except as provided by this subchapter, a man who claims to be the father of a child shall file a notice of intent to assert as provided by this subchapter his right to establish paternity of a child that may result from the sexual intercourse.
- (c) Ignorance of a pregnancy is not a sufficient reason for failing to register with the registry to claim paternity of the child born of the pregnancy.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.2545. Information Regarding Registry, Birth Records, and Acknowledgments of Paternity Filed With Bureau of Vital Statistics

(a) On receipt of a request for a certificate under Section 160.260 attesting to the results of a search of the paternity registry, the bureau of vital statistics shall search:

- (1) notices of intent to claim paternity filed with the registry under this subchapter;
 - (2) birth records maintained by the bureau;
 - (3) acknowledgments of paternity filed with the bureau under Subchapter C; and
 - (4) central file records identifying a court of continuing jurisdiction and identifying the adjudicated father, if any.
- (b) The bureau shall furnish information resulting from a search under Subsection (a) to the requestor.

Added by Acts 1999, 76th Leg., ch. 556, 39, eff. Sept. 1, 1999.

160.255. Furnishing of Registry Information; Confidentiality; Offense

(a) If the mother's address has been provided, the registry shall send a copy of the notice of intent to claim paternity to the mother as notification that a man has registered with the paternity registry claiming to be the father of the mother's child.

(b) Information contained in the registry is confidential and may be released on request only to:

(1) a court;

(2) the mother of a child;

(3) an authorized agency;

(4) a licensed child-placing agency;

(5) an attorney at law in this state who is participating or assisting in a suit affecting the parent-child relationship, including termination of the parent-child relationship or a suit for the adoption of the child that the registrant claims to have fathered; or

(6) any other person or entity the bureau of vital statistics considers to have a legitimate interest in the information.

(c) The registry shall furnish registry information by electronic data exchange or any other means to the state's Title IV-D agency and the Department of Protective and Regulatory Services.

(d) A person commits an offense if the person intentionally and unlawfully releases information from the registry to the public or makes any other unlawful use of the information in violation of this subchapter. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.256. Notice of Intent to Claim Paternity

(a) Except as provided by Subsection (d), a person may register as provided by this subchapter by filing a notice of intent to claim paternity on a form provided by the bureau of vital statistics. This form shall be signed and acknowledged before a notary public.

(b) The bureau shall make registration forms available to all:

(1) hospitals and other birthing places in this state;

(2) licensed child-placing agencies;

(3) county and district clerks;

(4) municipal clerks;

(5) justices of the peace;

(6) jails;

(7) prisons; and

(8) facilities of the Texas Department of Criminal Justice and Texas Youth Commission.

(c) A notice of intent to claim paternity may be filed before the birth of the child but may not be filed after the 30th day after the date of birth of the child.

(d) If the bureau of vital statistics has received from the clerk of the court notice under Chapter 108 of a decree terminating the parent-child relationship between the person applying to register and the child, the bureau shall notify the person that the persons parent-child relationship with the child has been terminated and may not enter into the registry a notice of intent to claim paternity filed by the person.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.257. Denial of Registrants Paternity; Notification

(a) Not later than the 30th day after the date of the receipt of notification from the bureau of vital statistics that a notice of intent to claim paternity has been filed, the mother of the child may deny the registrants claim of paternity on a form provided by the bureau and signed and acknowledged before a notary public.

(b) If the mother denies that the registrant is the father of the child, the bureau of vital statistics shall immediately notify the registrant of the denial and of the registrants right to file a legal action to establish paternity.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.258. Effect of Failure to File Notice of Intent

Except as provided by Chapter 102 and Chapter 161, a man who fails to file a notice of intent to claim paternity before the 30th day after the date of the birth of the child may not assert an interest in the child other than by filing a suit to establish paternity before the termination of the mans parental rights.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.259. Change or Revocation of Registry Information

(a) A man who files a notice of intent to claim paternity with the registry shall promptly notify the registry in writing of any change in the information, including a change of address.

(b) A man who files a notice of intent to claim paternity may at any time revoke the notice by sending the registry a written statement signed and acknowledged by the registrant before a notary public. The statement must include a declaration that, to the best of the registrants knowledge and belief:

(1) the registrant is not the father of the named child; or

(2) a court has adjudicated paternity and a person other than the registrant has been determined to be the father of the child.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.260. Furnishing of Certificate of Registry Search

On request, the bureau of vital statistics shall furnish a certificate, signed by the state registrar of vital statistics, attesting to the results of a search of the registry regarding a notice of intent to claim paternity to:

- (1) a court;
- (2) the mother of a child;
- (3) an authorized agency;
- (4) a licensed child-placing agency;
- (5) an attorney licensed to practice law in this state who is participating or assisting in an adoption; or
- (6) any other person or entity the bureau of vital statistics considers to have a legitimate interest in the information.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.261. Removal of Registrants Name

If a court determines that a registrant is not the father of the child, the court shall order the bureau of vital statistics to remove the registrants name from the registry. On receipt of an order for the removal of a registrants name, the bureau of vital statistics shall remove the name from the registry.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.262. Registry Fees

(a) A fee may not be charged for filing with the registry a notice of intent to claim paternity of a child or a denial of a registrants paternity.

(b) Except as provided by Subsection (c), the Texas Department of Health may charge a fee for processing a search of the paternity registry and for furnishing a certificate under Section 160.260.

(c) The Department of Protective and Regulatory Services and the Title IV-D agency are not required to pay a fee under Subsection (b).

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

160.263. Admissibility of Information Maintained by Registry

Information maintained by the paternity registry is admissible in a proceeding in a court or administrative tribunal of this state for any purpose, including for the establishment of the registrants paternity or an action to terminate parental rights.

Added by Acts 1997, 75th Leg., ch. 561, 6, eff. Sept. 1, 1997.

CHAPTER 161. TERMINATION OF THE PARENT/CHILD RELATIONSHIP

SUBCHAPTER A. GROUNDS

161.001. Involuntary Termination of Parent-Child Relationship

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 parents 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 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 (indecent 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); and
- (xiii) Section 43.26 (possession or promotion of child pornography);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parents 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 Protective and Regulatory Services or an authorized agency for not less than six months, and:

- (i) the department or authorized agency 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 Protective and Regulatory 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 parents:
- (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, as defined by Section 261.001; or
- (S) voluntarily delivered the child to an emergency medical services provider under Section 262.301 without expressing an intent to return for the child; and
- (2) that termination is in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 65, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 18, eff. Sept. 1, 1999.

161.002. Termination of the Rights of an Alleged Biological Father

- (a) The procedural and substantive standards for termination of parental rights apply to the termination of the rights of an alleged biological father.
- (b) The rights of an alleged biological 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 prior to the final hearing in the suit;
 - (2) he has not registered with the paternity registry under Subchapter D, 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; or
 - (3) he has registered with the paternity registry under Subchapter D, Chapter 160, but the petitioners 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) The termination of the rights of an alleged biological father under Subsection (b)(2) rendered on or after January 1, 1998, does not require personal service of citation or citation by publication on the alleged father.

(d) The termination of rights of an alleged biological father under Subsection (b)(3) 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) unless the court, after reviewing the petitioners sworn affidavit describing the petitioners effort to identify and locate the alleged biological father and considering any evidence submitted by the attorney ad litem for the alleged biological father, has found that the petitioner exercised due diligence in attempting to identify and locate the alleged biological father. The order shall contain specific findings regarding due diligence of the petitioner.

(f) The court shall not render an order terminating parental rights under Subsection (b)(3) unless the court, after reviewing the petitioners sworn affidavit describing the petitioners 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 66, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 7, eff. Sept. 1, 1997.

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 Protective and Regulatory 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 the six months preceding the filing of the petition;

(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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 67, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

161.005. Termination When Parent is Petitioner

(a) A parent may file a suit for termination of the petitioners parent-child relationship. The court may order termination if termination is in the best interest of the child.

(b) If the petition designates the Department of Protective and Regulatory 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 68, eff. Sept. 1, 1995.

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" means an intentional expulsion of a human fetus from the body of a woman induced by any means for the purpose of causing the death of the fetus.

(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, 1, eff. April 20, 1995.

161.007. Termination When Pregnancy Results From Criminal Act

The court may order the termination of the parent-child relationship of a parent and a child if the court finds that:

- (1) the parent has been convicted of an offense committed under Section 22.011, 22.021, or 25.02, Penal Code;
- (2) as a direct result of the commission of the offense by the parent, the victim of the offense became pregnant with the parents child; and
- (3) termination is in the best interest of the child.

Added by Acts 1997, 75th Leg., ch. 561, 8, eff. Sept. 1, 1997.

SUBCHAPTER B. PROCEDURES

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, address, 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 address 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 and that an affidavit of status of the child has been executed as provided by this chapter;

(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 Protective and Regulatory 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 Protective and Regulatory 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 Protective and Regulatory 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 parents affidavit of relinquishment of parental rights, the parent shall file a copy of the revocation with the clerk of the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 69, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 9, eff. Sept. 1, 1997.

161.1035. Revocability of Certain Affidavits

An affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child 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, 10, eff. Sept. 1, 1997.

161.104. Rights of Designated Managing Conservator Pending Court Appointment

A person, licensed child-placing agency, or authorized agency 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 70, eff. Sept. 1, 1995.

161.105. Affidavit of Status of Child

(a) If the child has no presumed father, an affidavit shall be:

- (1) signed by the mother, whether or not a minor;
- (2) witnessed by two credible persons; and
- (3) verified before a person authorized to take oaths.

(b) The affidavit must:

- (1) state that the mother is not and has not been married to the alleged father of the child;
- (2) state that the mother and alleged father have not attempted to marry under the laws of this state or another state or nation;
- (3) state that paternity has not been established under the laws of any state or nation; and
- (4) contain one of the following, as applicable:

(A) the name and whereabouts of a man alleged to be the father;

(B) the name of an alleged father and a statement that the affiant does not know the whereabouts of the father;

(C) a statement that an alleged father has executed an acknowledgment of paternity under Chapter 160 and an affidavit of relinquishment of parental rights under this chapter and that both affidavits have been filed with the court; or

(D) a statement that the name of an alleged father is unknown.

(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 40, eff. Sept. 1, 1999.

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 authorized agency to establish the affiant's paternity of the child.

(f) A waiver in an affidavit under this section that designates the Department of Protective and Regulatory Services or a licensed child-placing agency to serve as the managing conservator is irrevocable. A waiver in any other affidavit under this section is revocable unless it expressly provides that it is irrevocable for a stated period not to exceed 60 days after the date of execution.

(g) A waiver in an affidavit under this section that fails to state that the waiver is irrevocable for a stated time is revocable as provided by Section 161.1035.

(h) An affidavit under this section that contains a waiver that is revocable must contain:

(1) a statement in boldfaced type concerning the right of the person who executed the affidavit to revoke the affidavit only if the revocation is made before the 11th day after the date the affidavit is executed; and

(2) the name and address of the person to whom the revocation is to be delivered.

(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) To revoke a waiver, the person who executed the affidavit 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 of waiver of interest in a child. If a person attempting to revoke an affidavit under this subsection has knowledge that a suit for termination of the parent-child relationship based on the persons waiver of interest in a child has been filed, the person shall file a copy of the revocation with the clerk of the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 11, eff. Sept. 1, 1997.

161.107. Missing Parent or Relative

(a) In this section:

(1) "Parent" means a parent whose parent-child relationship with a child has not been terminated.

(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 Protective and Regulatory 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 71, eff. Sept. 1, 1995.

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 Protective and Regulatory 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, 12, eff. Sept. 1, 1997.

161.109. Requirement of Paternity Registry Certificate

(a) If an affidavit of status of child as provided by this chapter states that the father of the child is unknown and no probable father is known, a certificate from the bureau of vital statistics signed by the registrar that a diligent search has been made of the paternity registry maintained by the bureau 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 bureau of vital statistics signed by the registrar states that a diligent search has been made of the paternity registry maintained by the bureau 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, 12, eff. Sept. 1, 1997.

SUBCHAPTER C. HEARING AND ORDER

161.201. No Final Order Until Child Five Days Old

If the petition in a suit for termination is filed before the birth of the child, the court may not conduct a hearing in the suit nor render an order other than a temporary order until the child is at least five days old.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

161.2011. Continuance; Access to Child

(a) The court shall not proceed to final trial in a suit to terminate the parent-child relationship during the time that any criminal charges filed against a parent whose rights are subject to termination in the suit are pending if the criminal charges are directly related to the grounds for which termination of the parents rights are sought unless it determines that it is in the best interest of the child.

(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, 61, eff. Sept. 1, 1997.

161.202. Preferential Setting; Suit by Governmental Entity

In a termination suit filed by a governmental entity, licensed child-placing agency, or authorized agency, 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 attorney or guardian 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, 1, eff. April 20, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

161.204. Termination Based on Affidavit of Waiver of Interest

In a suit for termination, the court may render an order terminating all legal relationships and rights which exist or may exist 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, 1, eff. April 20, 1995.

161.205. Order Denying Termination

If the court does not order termination of the parent-child relationship, it shall:

- (1) dismiss the petition; or
- (2) render any order in the best interest of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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.
- (b) 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 72, eff. Sept. 1, 1995.

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 Protective and Regulatory Services, a licensed child-placing agency, or an authorized 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, 1, eff. April 20, 1995.

161.208. Appointment of Department of Protective and Regulatory Services as Managing Conservator

If a parent of the child has not been personally served in a suit in which the Department of Protective and Regulatory Services seeks termination, the court that terminates a parent-child relationship may not appoint the Department of Protective and Regulatory 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

161.210. Sealing of File

The court, on the motion of a party or on the courts 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, 1, eff. April 20, 1995.

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, 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 601, 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, 19, eff. Sept. 1, 1999.

CHAPTER 162. ADOPTION

SUBCHAPTER A. ADOPTION OF A CHILD

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 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 six months preceding the adoption, 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 Protective and Regulatory 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 14, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

162.0025. Adoptive Home Screening

(a) The court shall order an adoptive home screening to evaluate each party who requests the adoption. The screening must be completed before a child may be placed in an applicants home unless the child is being adopted by a member of the childs family related by the second degree of consanguinity or affinity. The screening must comply with the rules adopted by the Board of Protective and Regulatory Services providing minimum requirements for the screening.

(b) The court may appoint an investigator to conduct the screening required by this section who has the qualifications established by rule of the Board of Protective and Regulatory Services providing minimum qualifications for persons who may perform adoptive home screenings.

(c) The cost of an adoptive home study shall be paid by an applicant who seeks to adopt a child.

Added by Acts 1997, 75th Leg., ch. 561, 13, eff. Sept. 1, 1997.

162.003. Social Study

(a) In a suit for adoption, including a suit in which a private agency or individual is responsible for placing the child for adoption, the court shall order a social study as provided in Chapter 107.

(b) The social study required by this section must include a complete investigation of the circumstances and condition of the home of a person petitioning for the adoption of a child under this chapter.

(c) The court shall order that the cost of the social study be paid by the person seeking to adopt the child who is the subject of the social study.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 73, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 800, 1, eff. Sept. 1, 1995.

162.004. Time for Hearing

(a) The court shall set the date for the hearing on the adoption at a time not before the 40th day after the later of the date the social study is ordered or the date criminal history record information is requested under Section 162.0085.

(b) The court may set the hearing at any time before the time provided by Subsection (a) if the hearing date provides adequate time for filing the social study and notifying the court of the criminal history record information for a person seeking to adopt the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 74, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 908, 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 681, 1, eff. Sept. 1, 1999.

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 social study 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, 15, eff. Sept. 1, 1997.

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 Protective and Regulatory 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 report shall include a history of physical, sexual, or emotional abuse suffered by the child, if any.

(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 psychiatric 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, 1, eff. April 20, 1995.

162.006. Right to Examine Records

(a) The department, licensed child-placing agency, person, or entity placing a child for adoption shall inform the prospective adoptive parents of their right to examine the records and other information relating to the history of the child. The person or entity 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 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, 1, eff. April 20, 1995.

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;
- (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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 bureau of vital statistics under Section 162.006(e), a certificate from the bureau 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1390, 20, eff. Sept. 1, 1999.

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 Protective and Regulatory 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, 75, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 908, 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 16, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 76, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 601, 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 600, 2, eff. Jan. 1, 1998.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 77, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

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 access, as provided in Chapter 153.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

162.018. Access to Information

(a) The adoptive parents are entitled to receive copies of the records 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.

(b) 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.

(c) 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.

(d) At the time an adoption order is rendered, the court shall provide to the parents of an adopted child information provided by the bureau of vital statistics 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, affidavit of status of child, 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 17, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 bureau of vital statistics as required by this subchapter and Chapter 108.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 78, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 18, eff. Sept. 1, 1997.

SUBCHAPTER B. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

162.101. Definitions

In this subchapter:

- (1) "Appropriate public authorities," with reference to this state, means the executive director.
- (2) "Appropriate authority in the receiving state," with reference to this state, means the executive director.
- (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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 846, 2, eff. June 16, 1995.

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, 1, eff. April 20, 1995. Renumbered from V.T.C.A., Family Code 162.108 and amended by Acts 1995, 74th Leg., ch. 846, 3, eff. June 16, 1995.

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 executive director 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 executive director determines that financial responsibility is unlikely to be assumed by the sending agency or the child's parents, the executive director may cause the child to be returned to the sending agency.

(c) After default, the department 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, 1, eff. April 20, 1995. Renumbered from V.T.C.A., Family Code 162.109 and amended by Acts 1995, 74th Leg., ch. 846, 4, eff. June 16, 1995.

162.104. Approval of Placement

The executive director 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, 1, eff. April 20, 1995. Renumbered from V.T.C.A., Family Code 162.110 and amended by Acts 1995, 74th Leg., ch. 846, 5, eff. June 16, 1995.

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, 1, eff. April 20, 1995. Renumbered from V.T.C.A., Family Code 162.111 by Acts 1995, 74th Leg., ch. 846, 6, eff. June 16, 1995.

162.106. Compact Authority

(a) The governor shall appoint the executive director of the Department of Protective and Regulatory Services as compact administrator.

(b) The executive director 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, 1, eff. April 20, 1995. Renumbered from V.T.C.A., Family Code 162.112 and amended by Acts 1995, 74th Leg., ch. 846, 7, eff. June 16, 1995.

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 child-care institution 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 child-care institution issued by the department 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, 1, eff. April 20, 1995. Renumbered from V.T.C.A., Family Code 162.113 and amended by Acts 1995, 74th Leg., ch. 846, 8, eff. June 16, 1995.

SUBCHAPTER C. INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

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 Protective and Regulatory 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 Protective and Regulatory Services; and
- (b) provide procedures for interstate childrens 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 Protective and Regulatory Services, through its executive director, 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 holders 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 Protective and Regulatory 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 Protective and Regulatory 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. 96B272), Titles IV-E and XIX of the Social Security Act, and other applicable federal laws. The Department of Protective and Regulatory 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, 9, eff. June 16, 1995.

162.202. Authority of Department of Protective and Regulatory Services

The Department of Protective and Regulatory 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 article has the force and effect of law.

Added by Acts 1995, 74th Leg., ch. 846, 9, eff. June 16, 1995.

162.203. Compact Administration

The executive director of the Department of Protective and Regulatory 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 executive director and the commissioner of human services 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, 9, eff. June 16, 1995.

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, 9, eff. June 16, 1995.

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, 9, eff. June 16, 1995.

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 wilfully 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, 9, eff. June 16, 1995.

SUBCHAPTER D. ADOPTION SERVICES BY THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

162.301. Definitions

In this subchapter:

(1) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the department 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 Protective and Regulatory Services.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, 1, eff. Aug. 28, 1995.

162.302. Adoption Assistance Program

(a) The department shall administer a program designed to promote the adoption of children by providing information to prospective adoptive parents concerning the availability and needs of the children, assisting

the parents in completing the adoption process, and providing adoption assistance necessary for the parents to adopt the children.

(b) The legislature intends that the program benefit children residing in foster homes at state or county expense by providing them with the stability and security of permanent homes and that the costs paid by the state and counties for foster home care for the children be reduced.

(c) The program shall be carried out by licensed child-placing agencies or county child-care or welfare units under rules adopted by the department.

(d) The department shall keep records necessary to evaluate the programs effectiveness in encouraging and promoting the adoption of children.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, 2, eff. Aug. 28, 1995.

162.303. Dissemination of Information

The department, county child-care or welfare units, and licensed child-placing agencies shall disseminate information to prospective adoptive parents concerning the availability and needs of children for adoption and the existence of adoption assistance for parents who adopt them. Special effort shall be made to disseminate the information to families that have lower income levels or that belong to disadvantaged groups.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, 3, eff. Aug. 28, 1995.

162.304. Financial and Medical Assistance

(a) The department shall 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.

(c) In addition to the subsidy under Subsection (b), the department may subsidize the cost of medical care for a child. The department shall determine the amount and need for the subsidy.

(d) The county may pay a subsidy under Subsection (b) or (c) if the county is responsible for the child's foster care at the time of the child's adoptive placement.

(e) If the child is receiving supplemental security income from the federal government, the state may pay the subsidy regardless of whether the state is the managing conservator for the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, 4, eff. Aug. 28, 1995.

162.305. Funds

The department and other state agencies shall actively seek and use federal funds available for the purposes of this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, 5, eff. Aug. 28, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 412, 6, eff. Aug. 28, 1995.

162.308. Race or Ethnicity

- (a) The department, a county child-care or welfare unit, or a licensed child-placing agency may not make an adoption placement decision on the presumption that placing a child in a family of the same race or ethnicity as the race or ethnicity of the child is in the best interest of the child.
- (b) Unless an independent psychological evaluation specific to a child indicates that placement with a family of a particular race or ethnicity would be detrimental to the child, the department, county child-care or welfare unit, or licensed child-placing agency may not deny, delay, or prohibit the adoption of a child because the department, county, or agency is attempting to locate a family of a particular race or ethnicity.
- (c) This section does not prevent or limit the recruitment of minority families as adoptive families, but the recruitment of minority families may not be a reason to delay placement of a child with an available family of a race or ethnicity different from that of the child.
- (d) A state or county employee who violates this section is subject to immediate dismissal. A licensed child-placing agency that violates this section is subject to action by the licensing agency as a ground for revocation or suspension of the agency's license.
- (e) A district court, on the application for an injunction or the filing of a petition complaining of a violation of this section by any person residing in the county in which the court has jurisdiction, shall enforce this section by issuing appropriate orders. An action for an injunction is in addition to any other action, proceeding, or remedy authorized by law. An applicant or petitioner who is granted an injunction or given other appropriate relief under this section is entitled to the costs of the suit, including reasonable attorneys fees.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 879, 1, eff. June 16, 1995.

162.309. Advisory Committee on Promoting Adoption of Minority Children

- (a) An advisory committee on promoting the adoption of and provision of services to minority children is established within the department.
- (b) The committee is composed of 12 members appointed by the board of the Department of Protective and Regulatory Services. The board shall appoint to the committee individuals who in the aggregate have

knowledge of and experience in community education, cultural relations, family support, counseling, and parenting skills and education. At least six members must be ordained members of the clergy.

(c) A committee member serves for a two-year term and may be appointed for additional terms.

(d) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the members duties under this section.

(e) The committee shall elect one member to serve as presiding officer. The presiding officer serves for a two-year term and may be elected for additional terms.

(f) The department shall set the time and place of the first committee meeting. The committee shall meet at least quarterly.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) To promote the adoption of and provision of services to minority children, the committee shall:

(1) study, develop, and evaluate programs and projects relating to community awareness and education, family support, counseling, parenting skills and education, and reform of the child welfare system;

(2) consult with churches and other cultural and civic organizations; and

(3) report to the department at least annually the committees recommendations for department programs and projects that will promote the adoption of and provision of services to minority children.

(i) On receiving the committees recommendations, the department may adopt rules to implement a program or project recommended under this section. The department may solicit, accept, and use gifts and donations to implement a program or project recommended by the committee.

(j) The department shall report to the legislature not later than November 1 of each even-numbered year following the first year in which it receives recommendations under this section regarding committee recommendations and action taken by the department under this section.

(k) The recruitment of minority families may not be a reason to delay placement of a child with an available family of a race or ethnicity different from that of the child.

Added by Acts 1997, 75th Leg., ch. 165, 7.17(a), eff. Sept. 1, 1997.

SUBCHAPTER E. VOLUNTARY ADOPTION REGISTRIES

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, 1, eff. April 20, 1995.

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 adoptees 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 bureau 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 bureau under this subchapter.
- (12) "Department" means the Department of Protective and Regulatory Services.

(13) "Registry" means a mutual consent voluntary adoption registry established under this subchapter.

(14) "Bureau" means the bureau of vital statistics.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 1, 11, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 19, eff. Sept. 1, 1997.

162.403. Establishment of Voluntary Adoption Registries

(a) The bureau 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 bureau 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 20, eff. Sept. 1, 1997.

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, 21, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 79, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 968, 2, eff. Sept. 1, 1995.

162.406. Registration Eligibility

- (a) An adoptee who is 18 years of age or older may apply to a registry for information about the adoptees 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 adoptees birth mother in her application identifies him as the adoptees 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 persons 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 3, eff. Sept. 1, 1995.

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 bureau.
- (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 applicants 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 registrants 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 4, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 22, eff. Sept. 1, 1997.

162.408. Proof of Identity

The rules and minimum standards of the Texas Board of Health for the bureau 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 23, eff. Sept. 1, 1997.

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 applicants identity to be disclosed to a registrant who is eligible to learn the applicants 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 administrators 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 applicants 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 applicants 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 adoptees other birth parent;
- (4) the last known address of the adoptees 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 applicants 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 applicants siblings by birth and adoption and their dates and places of birth, if known;

(3) the names of the applicants legal parents;

(4) the names of the applicants birth parents, if known; and

(5) any other information known to the applicant through which the existence and identity of the applicants biological siblings can be confirmed.

(e) An application may also contain additional information through which the applicants 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 5, eff. Sept. 1, 1995.

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 bureau 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 6, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 24, eff. Sept. 1, 1997.

162.412. Supplemental Information

(a) A registrant may amend the registrants registration and submit additional information to the administrator. A registrant shall notify the administrator of any change in the registrants 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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 7, eff. Sept. 1, 1995.

162.414. Matching Procedures

(a) The administrator shall process each registration in an attempt to match the adoptee and the adoptees birth parents or the adoptee and the adoptees 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 bureau. 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 bureau. The bureau 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 8, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 25, eff. Sept. 1, 1997.

162.416. Disclosure of Identifying Information

(a) When a match has been made and confirmed to the administrators satisfaction, the administrator shall mail to each registrant, at the registrants 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 registrants having consented after the match to disclosure if the registrant is dead, the registrants registration was valid at the time of death, and the registrant had in writing specifically authorized the postdeath disclosure in the registrants 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 childs 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 persons death.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 9, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

162.420. Rulemaking

(a) The Texas Board of Health shall make rules and adopt minimum standards for the bureau 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 persons identity.

(b) The bureau 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 Texas Board of Health, the board 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 26, eff. Sept. 1, 1997.

162.421. Prohibited Acts; Criminal Penalties

(a) This subchapter does not prevent the bureau 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 statements 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 968, 10, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 27, eff. Sept. 1, 1997.

162.422. Immunity From Liability

(a) The bureau 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 bureau 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 561, 28, eff. Sept. 1, 1997.

SUBCHAPTER F. ADOPTION OF AN ADULT

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, 1, eff. April 20, 1995.

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 petitioners residence.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

162.506. Adoption Order

The court shall grant the adoption if the court finds that the requirements for adoption of an adult are met.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 adults adoptive parents as though the adopted adult were the biological child of the adoptive parents.

(c) The adopted adult retains the right to inherit from the adults biological parents. However, a biological parent may not inherit from or through an adopted adult.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

162.601. Incentives for Licensed Child-Placing Agencies

(a) Subject to the availability of funds, the Department of Protective and Regulatory 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, 1, eff. Sept. 1, 1997.

SUBTITLE C. JUDICIAL RESOURCES AND SERVICES

CHAPTER 201. ASSOCIATE JUDGE; CHILD SUPPORT MASTER

SUBCHAPTER A. ASSOCIATE JUDGE

201.001. Appointment

(a) A judge of a court having jurisdiction of a suit under this title or Title 1 or 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 appointment.

(c) If more than one court in a county has jurisdiction of a suit under this title or Title 1 or 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 a master appointed under Subchapter B or an associate judge appointed under Subchapter C.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 1, eff. Sept. 1, 1999.

201.002. Qualifications

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 judges salary is paid from the county fund available for payment of officers salaries.

(d) This section does not apply to a master appointed under Subchapter B or an associate judge appointed under Subchapter C.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 2, eff. Sept. 1, 1999.

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 a master appointed under Subchapter B or an associate judge appointed under Subchapter C.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 3, eff. Sept. 1, 1999.

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 or Title 1 or 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, 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 4, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 the appearance of witnesses;
 - (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; and
 - (14) take action as necessary and proper for the efficient performance of the associate judges 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 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 5, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

201.009. Court Reporter

(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 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) The record may be preserved in the absence of a court reporter by any other 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 appeal of the associate judges report or proposed order, 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 201.015.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 6, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

201.011. Report

(a) The associate judges report may contain the associate judges findings, conclusions, or recommendations, including a proposed order. The associate judges report must be in writing in the form directed by the referring court. The form may be a notation on the referring courts docket sheet.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judges report. The notice may be given in the form of a proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or a copy of the associate judges written report, including any proposed order; or

(2) by certified mail, return receipt requested.

(d) The associate judge shall certify the date of mailing of notice by certified mail. Notice is considered given on the third day after the date of mailing.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judges 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 7, eff. Sept. 1, 1999.

201.012. Notice of Right to Appeal

(a) Notice of the right of appeal to the judge of 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, 1, eff. April 20, 1995.

201.013. Order of Court

(a) Pending appeal of the associate judges report, including any proposed order, to the referring court, the decisions and recommendations of the associate judge are in full force and effect and are enforceable as an order of the referring court, except for orders providing for the appointment of a receiver.

(b) If an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the associate judge become the order of the referring court only on the referring courts signing an order conforming to the associate judges report.

(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 of appeal 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 appeal. 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 appeal or may continue the persons detention or incarceration for not more than 72 hours.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 8, eff. Sept. 1, 1999.

201.014. Judicial Action on Associate Judges Report

Unless a party files a written notice of appeal, the referring court may:

- (1) adopt, modify, or reject the associate judges report, including any proposed order;
- (2) hear further evidence; or
- (3) recommit the matter to the associate judge for further proceedings.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 9, eff. Sept. 1, 1999.

201.015. Appeal to Referring Court

(a) A party may appeal an associate judges report by filing notice of appeal not later than the third day after the date the party receives notice of the substance of the associate judges report as provided by Section 201.011.

(b) An appeal to the referring court must be in writing specifying the findings and conclusions of the associate judge to which the party objects. The appeal is limited to the specified findings and conclusions.

(c) On appeal to the referring court, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal. The 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.

(d) Notice of an appeal to the referring court shall be given to the opposing attorney under Rule 21a, Texas Rules of Civil Procedure.

(e) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(f) The referring court, after notice to the parties, shall hold a hearing on all appeals not later than the 30th day after the date on which the initial appeal was filed with the referring court.

(g) Before the start of a hearing by an associate judge, the parties may waive the right of appeal to the referring court in writing or on the record.

(h) Denial of an appeal under this section or waiver of the right to appeal to 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 on appeal of an associate judges report, including any proposed order, resulting from a jury trial.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1302, 10, eff. Sept. 1, 1999.

201.016. Appellate Review

(a) Failure to appeal to the referring court, by waiver or otherwise, the approval by the referring court of an associate judges 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.

(b) 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

201.018. Visiting Associate Judge

(a) If an associate judge appointed under this subchapter is temporarily unable to perform the judges 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 judges 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 six 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 a master appointed under Subchapter B.

Added by Acts 1999, 76th Leg., ch. 1355, 1, eff. Aug. 30, 1999.

SUBCHAPTER B. CHILD SUPPORT MASTER AND COURT MONITOR

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 IVBD cases, shall determine which courts require the appointment of a full-time or part-time master to complete each Title IVBD case within the time specified in this subchapter.

(b) The presiding judge may limit the appointment to a specified time period and may terminate an appointment at any time.

(c) A master 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 masters to serve the regions.

(d) If the presiding judge determines that a court requires a master, the presiding judge shall appoint a master. If a master is appointed for a court, all Title IVBD cases shall be referred to the master by a general

order for each county issued by the judge of the court for which the master is appointed, or, in the absence of that order, by a general order issued by the presiding judge who appointed the master. Referral of Title IVBD cases may not be made for individual cases or case by case.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

201.102. Application of Law Governing Associate Judges

(a) The provisions of Subchapter A relating to the qualifications, powers, and immunity of an associate judge apply to a master appointed under this subchapter, except that a master:

(1) may reside anywhere within the administrative judicial region in which the court to which the master is appointed is located or, if a master is appointed to serve in two or more administrative judicial regions, may reside anywhere within the regions; and

(2) may not be designated as an associate judge.

(b) Except as provided by this subchapter, the provisions of Subchapter A relating to an associate judge apply to a master appointed under this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 41, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1302, 11, eff. Sept. 1, 1999.

201.103. Designation of Host County

(a) The presiding judges of the administrative judicial regions by majority vote shall determine the host county of a master 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 master and other personnel assisting the master.

(c) A master is not required to reside in the host county.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

201.104. Powers and Duties of Master

(a) On motion of a party, a master may refer a complex case back to the judge for final disposition after the master has recommended temporary support.

(b) A master shall take testimony and make a record in all Title IVBD cases as provided by this chapter.

(c) A master may render and sign any order that is not a final order on the merits of the case.

(d) A master may recommend to the referring court any order after a trial on the merits.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 42, eff. Sept. 1, 1999.

201.1041. Judicial Action on Masters Report

(a) If an appeal to the referring court is not filed or the right to appeal is waived, a recommendation of the master, other than a recommendation of enforcement by contempt or a recommendation of the immediate incarceration of a party, shall become an order of the referring court by operation of law without ratification by the referring court.

(b) A masters report that recommends enforcement by contempt or the immediate incarceration of a party becomes an order of the referring court only if the referring court signs an order adopting the masters recommendation.

(c) Except as provided by Subsection (b), the decisions and recommendations of the master have full force and effect and are enforceable as an order of the referring court during an appeal of the masters report to the referring court.

Added by Acts 1999, 76th Leg., ch. 556, 43, eff. Sept. 1, 1999.

201.1042. Appeal to Referring Court

(a) Except as provided in this section, Section 201.015 applies to an appeal of the masters recommendations.

(b) The party appealing a masters recommendation shall file notice with the referring court and the clerk of the court.

(c) A respondent who timely files an appeal of a masters report recommending incarceration after a finding of contempt shall be brought before the referring court not later than the first working day after the date of filing the appeal. The referring court shall determine whether the respondent should be released on bond or whether the respondents 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 respondents promise to appear in court for a hearing on the appeal 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 hearing on the appeal 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 respondents appearance in court can be assured and the respondent remains incarcerated, a hearing on the appeal shall be held as soon as practicable, but not later than the fifth day after the date the respondents notice of appeal was filed, unless the respondent and, if represented, the respondents attorney waive the accelerated hearing.

Added by Acts 1999, 76th Leg., ch. 556, 43, eff. Sept. 1, 1999.

201.105. Compensation of Master

(a) A master appointed under this subchapter is entitled to a salary 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 salary paid to a district judge as set by the state general appropriations act.

(b) The masters salary shall be paid from the county fund available for payment of officers salaries or from funds available from the state and federal government as provided in Section 201.107.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 master appointed under this subchapter, as needed to implement and administer the provisions of this subchapter.

(b) The salary of the personnel and court monitors shall be paid from the county fund available for payment of officers salaries or from funds available from the state and federal government as provided by Section 201.107.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1072, 2.

201.1065. Supervision of Masters

Text of section as added by Acts 1999, 76th Leg., ch. 556, 44

(a) Not later than January 1, 2000, the office of court administration and the presiding judges of the administrative judicial regions shall report to the legislature a plan to improve the efficiency of the masters appointed under this subchapter and the masters participation in the child support enforcement program in the state.

(b) The plan must:

(1) contain written personnel performance standards and require annual performance evaluations for the masters and other personnel appointed under this subchapter;

(2) require uniform practices;

(3) address training needs and resource requirements of the masters;

(4) ensure accountability of the masters for complying with applicable federal and state law, including statutes regarding a minimum 40-hour workweek and working hours under Chapter 658, Government Code; and

(5) require a uniform process for receiving, handling, and resolving complaints about individual masters or the child support masters program under this subchapter.

(c) The office of court administration shall assist the presiding judges in monitoring the masters compliance with job performance standards and federal and state laws and policies.

Added by Acts 1999, 76th Leg., ch. 556, 44, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 1072, 3, see 201.1065, post

201.1065. Duties of Child Support Court Monitor

Text of section as added by Acts 1999, 76th Leg., ch. 1072, 3

(a) A child support court monitor appointed under Section 201.106 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; and

(5) monitor the amount and timeliness of child support payments owed and paid by an obligor.

Added by Acts 1999, 76th Leg., ch. 1072, 3, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 556, 44, see 201.1065, ante

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. A master, a court monitor for each master, 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 masters, 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 IVBD agency shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IVBD program.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 45, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1072, 4, eff. Sept. 1, 1999.

201.108. Mandatory Appointment of Master

The presiding judge shall appoint a master for each court handling Title IVBD cases for which the state has not been granted an exemption from the expedited process of Title IVBD cases required by federal law.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

201.109. Exemption From Appointment of Master

(a) If a presiding judge of an administrative judicial region does not require the appointment of a master for a court, the presiding judge shall provide to the Title IVBD agency the information required by the secretary of health and human services to grant the court an exemption from the expedited process requirement for Title IVBD cases.

(b) On receipt of sufficient information, the Title IVBD agency shall immediately apply to the secretary for an exemption from the expedited process requirement for Title IVBD cases for the district court.

(c) The Title IVBD agency shall promptly notify the presiding judge of the administrative judicial region in which the court is located of any information received from the secretary concerning the application for the exemption.

(d) If the secretary does not grant an exemption for a court or if the secretary revokes an exemption for a court, the presiding judge of the administrative judicial region in which the court is located shall appoint a master as prescribed by this subchapter not later than the 30th day after the date the judge receives notice that the exemption was denied or revoked.

(e) The presiding judge of an administrative judicial region shall require each court within the judicial region to provide information and data to the presiding judge, the office of court administration, and the Title IVBD agency regarding the processing of Title IVBD cases necessary to:

(1) establish the need for an exemption as provided by Subsection (a); and

(2) comply with federal law.

(f) The Title IVBD agency and the office of court administration shall provide assistance to the presiding judge in obtaining and storing the information and data provided under this section.

(g) Any information or data required under this section may be provided as required by the presiding judge.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

201.110. Time for Disposition of Title IVBD Cases

(a) Title IVBD cases must be completed from the time of successful service to the time of disposition within the following time:

(1) 90 percent within three months;

(2) 98 percent within six months; and

(3) 100 percent within one year.

(b) Title IVBD cases shall be given priority over other cases.

(c) A clerk or judge may not restrict the number of Title IVBD cases that are filed or heard in the courts.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

201.111. Time to Act on Masters Report That Includes Finding of Contempt

(a) Not later than the 10th day after the date a masters report recommending a finding of contempt is filed, the referring court shall:

- (1) adopt, approve, or reject the masters report;
- (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 notice of appeal to the referring court.

Added by Acts 1995, 74th Leg., ch. 751, 80, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 46, eff. Sept. 1, 1999.

201.112. Limitation on Law Practice by Master

A master may not engage in the private practice of law.

Added by Acts 1999, 76th Leg., ch. 556, 47, eff. Sept. 1, 1999.

SUBCHAPTER C. ASSOCIATE JUDGE FOR SUBSTITUTE CARE AND CHILD PROTECTIVE SERVICES CASES

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 substitute care caseload, shall determine which courts require the appointment of a full-time or part-time associate judge to complete each case within the times specified in Chapters 262 and 263.

(b) The presiding judge may limit the appointment to a specified period and may terminate an appointment at any time.

(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 the presiding judge determines that a court requires an associate judge, the presiding judge shall appoint an associate judge. If an associate judge is appointed for a court, all substitute care 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 Chapter 262 or 263.

Added by Acts 1999, 76th Leg., ch. 1302, 12, eff. Sept. 1, 1999.

201.202. Application of Law Governing Associate Judges

(a) Except as provided by this subchapter, Subchapter A applies to an associate judge appointed under this subchapter.

(b) An associate judge may reside anywhere in the administrative judicial 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 1999, 76th Leg., ch. 1302, 12, eff. Sept. 1, 1999.

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, 12, eff. Sept. 1, 1999.

201.204. General Powers and Duties of Associate Judge

(a) On the motion of a party, 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 shall take testimony and make a record in a case as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1302, 12, eff. Sept. 1, 1999.

201.205. Compensation of Associate Judge

(a) An associate judge appointed under this subchapter is entitled to a salary as determined by a majority vote of the presiding judges of the administrative judicial regions. The salary may not exceed 90 percent of the salary paid to a district judge as set by the state General Appropriations Act.

(b) The associate judges 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 in Section 201.207.

Added by Acts 1999, 76th Leg., ch. 1302, 12, eff. Sept. 1, 1999.

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 salary 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 Section 201.207.

Added by Acts 1999, 76th Leg., ch. 1302, 12, eff. Sept. 1, 1999.

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, 12, eff. Sept. 1, 1999.

201.208. Appointment of Associate Judge for Child Protection Cases

(a) The presiding judge of an administrative judicial region may appoint an associate judge for a court handling child protection cases.

(b) This chapter does not limit the authority of a presiding judge to appoint visiting or retired judges to assist in processing cases in a reasonable time.

Added by Acts 1999, 76th Leg., ch. 1302, 12, eff. Sept. 1, 1999.

CHAPTER 202. FRIEND OF THE COURT

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 IVBD 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 courts duties under this subchapter, a friend of the court shall represent the court to ensure compliance with the courts order.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 certified 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 81, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 9, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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 courts 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, 1, eff. April 20, 1995.

CHAPTER 203. DOMESTIC RELATIONS OFFICES

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995.

203.002. Establishment of Domestic Relations Office

A commissioners court may establish a domestic relations office.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Renumbered from 203.003 and amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995. Renumbered from 203.004 and amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995.

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:
 - (A) mediation is used to resolve disputes in an action under Subdivision (3); or
 - (B) an agreed repayment schedule for delinquent child support is negotiated as an alternative to filing a suit to enforce a court order for child support under Subdivision (3);
 - (5) prepare a court-ordered social study;
 - (6) represent a child as 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; and
 - (10) provide information to assist a party in understanding, complying with, or enforcing the party's duties and obligations under Subdivision (3).
- (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 hire or contract for the services of attorneys to assist the office in providing services under this chapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Renumbered from 203.005 and amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 859, 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1191, 1, eff. June 18, 1999.

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 the filing of a suit;
 - (2) in a county that has a child support enforcement cooperative agreement with the Title IVBD agency, an initial child support service fee not to exceed \$36 to be paid to the domestic relations office on the filing of a suit;
 - (3) a reasonable application fee to be paid by an applicant requesting services from the office;

(4) a reasonable attorneys fee and court costs incurred or ordered by the court;

(5) a monthly child support service fee not to exceed \$3 to be paid by a managing conservator and possessory conservator for whom the domestic relations office acts as a local child support registry;

(6) community supervision fees as provided by Chapter 157 if community supervision officers are employed by the domestic relations office; and

(7) a reasonable fee for preparation of a court-ordered social study.

(b) The first payment of a fee under Subsection (a)(4) 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Renumbered from 203.009 and amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 48, eff. Sept. 1, 1999.

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 countys general fund or from other money available from the county.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Renumbered from 203.010 and amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 11, eff. Sept. 1, 1997.

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 possessory conservator or managing conservator of a child;
- (3) been designated to be the father of a child; or
- (4) executed an acknowledgment of paternity.

(b) A domestic relations office is entitled to obtain from the Department of Public Safety records that relate to:

- (1) a persons date of birth;
- (2) a persons most recent address;
- (3) a persons current drivers license status;
- (4) motor vehicle accidents involving a person; and
- (5) reported traffic-law violations of which a person has been convicted.

(c) A domestic relations office is entitled to obtain from the Texas Workforce Commission records that relate to:

- (1) a persons address;
- (2) a persons employment status and earnings;
- (3) the name and address of a persons 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 persons employer;
- (2) information provided by the person on a W-4 form; and
- (3) information provided by the persons 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 persons 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, 1, eff. April 20, 1995. Renumbered from 203.012 and amended by Acts 1995, 74th Leg., ch. 475, 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 803, 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, 7.18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 49, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 859, 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1191, 2, eff. June 18, 1999.

CHAPTER 204. CHILD SUPPORT COLLECTION BY PRIVATE ENTITY

204.001. Applicability

This chapter applies only to 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, 1, eff. Sept. 1, 1997. Redesignated from V.T.C.A., Human Resources Code 153.001 and amended by Acts 1999, 76th Leg., ch. 118, 1, eff. Sept. 1, 1999.

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, 1, eff. Sept. 1, 1997. Redesignated from V.T.C.A., Human Resources Code 153.002 and amended by Acts 1999, 76th Leg., ch. 118, 1, eff. Sept. 1, 1999.

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, 1, eff. Sept. 1, 1997. Redesignated from V.T.C.A., Human Resources Code 153.003 and amended by Acts 1999, 76th Leg., ch. 118, 1, eff. Sept. 1, 1999.

204.004. Funding

(a) To provide or recover the costs of providing services authorized by this chapter, a commissioner's 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 commissioner's 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, 1, eff. Sept. 1, 1997. Redesignated from V.T.C.A., Human Resources Code 153.004 and amended by Acts 1999, 76th Leg., ch. 118, 1, eff. Sept. 1, 1999.

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, 1, eff. Sept. 1, 1997. Redesignated from V.T.C.A., Human Resources Code 153.005 and amended by Acts 1999, 76th Leg., ch. 118, 1, eff. Sept. 1, 1999.

SUBTITLE D. ADMINISTRATIVE SERVICES

CHAPTER 231. TITLE IVBD SERVICES

SUBCHAPTER A. ADMINISTRATION OF TITLE IVBD PROGRAM

231.001. Designation of Title IVBD Agency

The office of the attorney general is designated as the states Title IVBD agency.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

231.0011. Development of Statewide Integrated System for Child Support and Medical Support Enforcement

(a) The Title IVBD agency shall have final approval authority on any contract or proposal for delivery of Title IVBD 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 and medical 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 IVBD agency, to comply with all federal requirements for the Title IVBD 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 IVBD agency may contract with any county meeting technical system requirements necessary to comply with federal law for provision of Title IVBD 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 IVBD cases. Any other case in the county, subject to federal requirements and the agreement of the county and the Title IVBD agency, may be included as a Title IVBD case. Any obligee under a support order may refuse Title IVBD 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 IVBD 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 IVBD agency.

(e) The Title IVBD 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 IVBD agency shall adopt rules to implement this section.

(g) Participation in the statewide integrated system for child support and medical 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 IVBD 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, 1.01, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 50, eff. Sept. 1, 1999.

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, 16, eff. Sept. 1, 1997.

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, 16, eff. Sept. 1, 1997.

231.002. Powers and Duties

(a) The Title IVBD 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 IVBD 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 IVBD agency may enter into agreements or contracts with federal, state, or other public or private agencies or individuals for the purpose of carrying out this chapter. The agreements or contracts between the agency and other state agencies or political subdivisions of the state 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 IVBD 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 IVBD 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 and medical 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 IVBD agency shall recognize and enforce the authority of the Title IVBD agency of another state to take actions similar to the actions listed in this section.
- (g) The Title IVBD 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 IVBD case; and
 - (2) may, by electronic or other means, transmit to another state a request for assistance in a Title IVBD case.
- (h) In each Title IVBD case in which the total amount of a child support obligors child support delinquency is at least \$5,000 and the obligor owns property in the state or resides in the state, the Title IVBD agency shall enforce the child support obligation by filing a child support lien under Subchapter G, Chapter 157. This subsection does not prohibit the Title IVBD agency from filing a child support lien in any other case in which a lien may be filed under Subchapter G, Chapter 157.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 874, 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 68, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, 6.27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 556, 51, eff. Sept. 1, 1999.

231.003. Forms and Procedures

The Title IVBD 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, 1, eff. April 20, 1995.

231.005. Biennial Report Required

(a) The Title IVBD 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;
- (2) the use and effectiveness of all enforcement tools authorized by state or federal law or otherwise available to the agency; and

(3) the progress and impact of the Title IVBD agency's efforts to use private contractors to perform Title IVBD program functions.

(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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 51, eff. Sept. 1, 1999.

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.

(b) A child support obligor or business entity ineligible to receive payments under Subsection (a) remains ineligible until:

(1) all arrearages have been paid; or

(2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

(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 attorneys 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 82, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 28, 1, eff. Sept. 1, 1999.

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 persons 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 the percentage of the persons benefits that would apply if the benefits equalled the persons monthly net resources as provided by Chapter 154, except that in no event may more than 50 percent of the persons weekly compensation benefits be withheld or assigned. 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) Notwithstanding Section 403.055, Government Code, the comptroller may not issue a warrant or initiate an electronic funds transfer to pay:

(1) the compensation of a state officer or employee who is indebted to the state under Subsection (a); or

(2) the remuneration of an individual who is being paid by a private person through a state agency, if the individual is indebted to the state under Subsection (a).

(j) Notwithstanding Section 2107.008, Government Code, a state agency may not pay:

(1) compensation to a state officer or employee who is indebted to the state under Subsection (a); or

(2) remuneration to an individual who is being paid by a private person through the agency if the individual 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 83, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, 7.19, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, 1.07, eff. Jan. 1, 2000.

231.008. Disposition of Funds

(a) The Title IVBD 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, 1, eff. April 20, 1995.

231.009. Payment of Penalties

From funds appropriated for the Title IVBD agency, the agency shall reimburse the Texas Department of Human Services for any penalty assessed under Title IVBA 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, 1, eff. April 20, 1995.

231.010. Case Processing Pilot Program

(a) As part of the development of a statewide integrated system for child support and medical support enforcement under Section 231.0011, the Title IV-D agency shall establish a pilot program to improve the efficiency of court processing of family welfare cases, including child support, medical support, and foster care cases. The Title IV-D agency shall consult with the Department of Protective and Regulatory Services in establishing the pilot program with respect to the processing of foster care cases.

(b) The Title IV-D agency shall identify at least two counties that have a population of more than one million and that are voluntarily participating in the statewide integrated system under Section 231.0011 for the development and establishment of pilot programs during each fiscal year of the 1998B1999 biennium. A county shall be selected on the basis of the county's ability to achieve the automation goals of the pilot program.

(c) A pilot program must include processes for:

(1) electronic case filing;

(2) automated reporting of appropriate orders to the state case registry required under 42 U.S.C. Section 654a;

(3) automated case tracking;

(4) automated child support delinquency monitoring; and

(5) automated statistical reporting to the state case registry.

(d) The pilot program authorized under this section shall be developed and implemented in cooperation with representatives of the counties identified under Subsection (b), including representatives of the county's judiciary.

(e) As part of the pilot program, the Title IV-D agency shall review county assessments of needs related to processing child support, medical support, and foster care cases and shall provide technical assistance to county and district clerks as requested.

(f) The Title IV-D agency shall provide funding for the pilot program from funds appropriated to operate the agency and from any available federal funds.

(g) Not later than January 15, 1999, the agency shall submit a report regarding the status of the pilot program to the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller. On request, the Title IV-D agency shall make the report available to any member of the legislature.

Added by Acts 1997, 75th Leg., ch. 420, 17, eff. Sept. 1, 1997.

231.011. Cooperation With Department of Protective and Regulatory Services

Text of section as added by Acts 1999, 76th Leg., ch. 228, 1

(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 agencies available child support locating resources;

(2) allow the department to use the Title IV-D agencies child support enforcement system to track child support payments and to have access to the agencies 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, 1, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 556, 51, see 231.011, post

231.011. Interagency Work Group

Text of section as added by Acts 1999, 76th Leg., ch. 556, 51

(a) The Title IVBD agency shall convene a standing work group to develop and maintain an interagency partnership strategy. The director of the Title IVBD agency shall lead the work group.

(b) The work group shall consist of representatives from the Department of Protective and Regulatory Services, the Texas Department of Human Services, the Texas Department of Health, the Texas Workforce Commission, and the office of the comptroller. The executive head of each agency shall appoint the agencies representative. If the work group addresses an issue that is under the authority of the Health and Human Services Commission, the work group shall include a representative from that commission when addressing that issue.

(c) The interagency partnership strategy shall:

(1) identify methods to improve the exchange of data between the agencies represented in the work group;

(2) develop procedures to coordinate the child support efforts of each agency in the work group;

(3) identify the benefits of contracts under which a state agency provides child support services related to the agencies core competency to the Title IVBD agency;

(4) identify ways to improve client intake and client referral;

(5) develop methods to enhance foster care child support collections;

(6) increase the recovery of Medicaid for the Title IVBD agency and the Texas Department of Health; and

(7) examine the benefits of contracts under which the comptroller or a private entity provides services regarding the receipt and payment of child support.

(d) Each agency represented on the work group shall identify specific child support services that are related to the agency's areas of core competence and may be provided by the agency under a contract. The state auditor and the State Council on Competitive Government shall assist:

(1) the agencies in identifying the child support services that are within the agency's core competency; and

(2) the work group in developing strategies to obtain child support services from the agencies.

Added by Acts 1999, 76th Leg., ch. 556, 51, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 228, 1, see 231.011 ante

231.012. County Advisory Work Group

(a) The director of the Title IVBD agency shall establish a county advisory work group to assist the Title IVBD agency in developing and changing child support programs that affect counties. The work group shall consist of at least one of each of the following:

(1) county judge;

(2) county commissioner;

(3) district clerk;

(4) domestic relations officer;

(5) Title IVBD master; and

(6) district court judge.

(b) The director of the Title IVBD agency shall appoint the members of the work group after consulting with the relevant professional or trade associations of the professions that are represented on the work group. The director of the Title IVBD agency shall determine the number of members of the work group and shall designate the presiding officer of the group.

(c) The work group shall:

(1) advise the director of the Title IVBD agency of the impact on counties that a proposed child support program or a change in a program may have;

(2) establish a state-county child support improvement plan;

(3) advise the Title IVBD agency on the operation of the state disbursement unit;

(4) plan for monetary incentives for county partnership programs;

(5) expand the number of agreements with counties for enforcement services; and

(6) work with relevant statewide associations on a model partnership agreement.

(d) A work group member or the members designee may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the members 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, 51, eff. Sept. 1, 1999.

231.013. Information Resources Steering Committee

(a) The Title IVBD agency shall create an information resources steering committee to:

(1) oversee information resource project development for the Title IVBD agency;

(2) make strategic prioritization recommendations;

(3) facilitate development of accurate information for the director of the Title IVBD agency; and

(4) perform other functions as determined by the director of the Title IVBD agency.

(b) The steering committee must include a senior management executive representing each significant function of the Title IVBD agency. The steering committee may include a person representing:

(1) counties; or

(2) a vendor contracting with the Title IVBD agency.

(c) The director of the Title IVBD agency shall appoint the members of the steering committee after consulting with the Department of Information Resources.

Added by Acts 1999, 76th Leg., ch. 556, 51, eff. Sept. 1, 1999.

231.014. Personnel

The director of the Title IVBD agency shall provide to the employees of the Title IVBD agency, as often as necessary, information regarding the requirements for employment under this title, including information regarding a persons responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 1999, 76th Leg., ch. 556, 51, eff. Sept. 1, 1999.

SUBCHAPTER B. SERVICES PROVIDED BY TITLE IVBD PROGRAM

231.101. Title IVBD Child Support Services

(a) The Title IVBD 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 and medical support establishment;
- (4) review and adjustment of child support orders;
- (5) enforcement of child support and medical 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.

(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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 702, 13, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 69, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, 19.01(22), eff. Sept. 1, 1999.

231.102. Eligibility for Child Support Services

The Title IVBD 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, 1, eff. April 20, 1995.

231.103. Application Fee

(a) The Title IVBD agency may charge a reasonable application fee and recover costs for the services provided.

(b) An application fee may not be charged in a case in which the Title IVBD agency provides services because the family receives public assistance.

(c) An application fee may not exceed a maximum amount established by federal law.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

231.104. Assignment of Right to Support

(a) To the extent authorized by 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, including the right to the amount accrued at the time the application is filed or the assistance is received.

(b) An application for child support services is an assignment of support rights, to the extent permitted by federal law, to enable the Title IVBD agency to establish and enforce child support and medical support obligations, but an assignment is not a condition of eligibility for services.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 70, eff. Sept. 1, 1997.

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 shall be made payable to and transmitted to the Title IV-D agency.

(b) If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or to a person other than the applicant or recipient, 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 agency. 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 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 71, eff. Sept. 1, 1997.

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 IVBD 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 72, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 52, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 73, eff. Sept. 1, 1997.

231.108. Confidentiality of Records and Privileged Communications

(a) Except as provided by Subsection (c), all files and records of services provided under this chapter, including information concerning a custodial parent, noncustodial parent, child, and 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 IVBD 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 IVBD agency may release information from the files and records to a consumer reporting agency in accordance with Section 231.114.

(d) The Title IVBD 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 IVBD agency, by rule, may provide for the release of information to persons for purposes not prohibited by federal law.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 1.08, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 74, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 53, eff. Sept. 1, 1999.

231.109. Attorneys Representing State

(a) Attorneys employed by the Title IVBD agency may represent this state or another state in an action brought under the authority of federal law or this chapter.

(b) The Title IVBD agency may contract with private attorneys, other private entities, or political subdivisions of the state to provide services in Title IVBD cases.

(c) The Title IVBD agency shall provide copies of all contracts entered into under this section to the Legislative Budget Board and the Governors 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 IVBD agency nor any attorney who provides services under this chapter is the applicants 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 IVBD agency or as otherwise provided by this chapter may not be appointed or act as a guardian ad litem or attorney ad litem for a child or another party.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 1.02, eff. Sept. 1, 1995.

231.110. Authorization of Service

The provision of services by the Title IVBD 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, 1, eff. April 20, 1995.

231.111. Disqualification of Agency

A court shall not disqualify the Title IVBD 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, 1, eff. April 20, 1995.

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 IVBD 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 54, eff. Sept. 1, 1999.

231.113. Enforcement of Support Obligations in Public Assistance Cases

To the extent possible, the Title IVBD 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, 1.03, eff. Sept. 1, 1995.

231.114. Reports of Child Support Payments to Consumer Reporting Agencies

(a) The Title IVBD 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 IVBD case.

(b) Before disclosing the information to consumer reporting agencies, the Title IVBD 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 IVBD agency shall make the information available to the consumer reporting agency.

(d) The Title IVBD 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 IVBD 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 IVBD case" means a case in which services are being provided by the Title IVBD 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, 1.03, eff. Sept. 1, 1995.

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 IVBD agency that the person did not cooperate with the Title IVBD agency.

(b) The Title IVBD agency shall:

(1) identify the actions or failures to act by a recipient of public assistance that constitute noncooperation with the Title IVBD 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 IVBD agency, the Title IVBD 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, 75, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 54, eff. Sept. 1, 1999.

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, 18, eff. Sept. 1, 1997.

231.117. Unemployed and Underemployed Obligor

(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 IVBD 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, 7.20(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1072, 5, eff. Sept. 1, 1999. Renumbered from 231.115 by Acts 1999, 76th Leg., ch. 62, 19.01(23), eff. Sept. 1, 1999. Renumbered from 231.115 and amended by Acts 1999, 76th Leg., ch. 556, 54, eff. Sept. 1, 1999.

231.118. Service of Citation

(a) The Title IVBD 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.

Added by Acts 1999, 76th Leg., ch. 556, 54, eff. Sept. 1, 1999.

231.119. Ombudsman Program

(a) The Title IVBD agency shall establish an ombudsman program to process and track complaints against the Title IVBD agency. The director of the Title IVBD 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 IVBD agency shall develop and implement a uniform process for receiving and resolving complaints against the Title IVBD agency throughout the state. The process shall include statewide procedures to inform the public and recipients of Title IVBD services of the right to file a complaint against the Title IVBD agency, including the mailing addresses and telephone numbers of appropriate Title IVBD 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 IVBD agency shall maintain a file on each written complaint filed with the Title IVBD 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 IVBD 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 IVBD 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 IVBD 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 IVBD agency's policies and procedures relating to complaint investigation and resolution.

Added by Acts 1999, 76th Leg., ch. 556, 54, eff. Sept. 1, 1999.

231.120. TollFree Telephone Number for Employers

The Title IVBD 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 IVBD agency shall inform employers about the toll-free telephone number.

Added by Acts 1999, 76th Leg., ch. 556, 54, eff. Sept. 1, 1999.

SUBCHAPTER C. PAYMENT OF FEES AND COSTS

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 IVBD 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, 1, eff. April 20, 1995.

231.202. Authorized Costs and Fees in Title IVBD Cases

In a Title IV-D case filed under this title, the Title IV-D agency shall pay:

- (1) filing fees and fees for issuance and service of process as provided by Chapter 110 of this code and by Sections 51.317, 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; and
- (4) a fee of \$45 for each item of process to each individual on whom service is required, including service by certified or registered mail, to be paid to a sheriff, constable, or clerk whenever service of process is required.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 1.04, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, 7.21(a), eff. Sept. 1, 1997.

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, 19, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

231.204. Prohibited Fees in Title IVBD 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 IVBD agency or a private attorney or political subdivision that has entered into a contract to provide Title IVBD services any fees or other amounts otherwise imposed by law for services rendered in, or in connection with, a Title IVBD 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; and
- (5) a fee for alternative dispute resolution services.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 55, eff. Sept. 1, 1999.

231.205. Limitations on Liability of Attorney General for Authorized Fees and Costs

(a) The Title IVBD 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 IVBD 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, 1, eff. April 20, 1995.

231.206. Restriction on Fees for Child Support or Registry Services in Title IVBD 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 IVBD agency, a managing conservator, or a possessory conservator in a Title IVBD case, except as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 IVBD agency.

(b) The monthly billing must be in the form and manner prescribed by the Title IVBD agency and be approved by the clerk, sheriff, or constable.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

231.208. Agreements for Reimbursement in Lieu of Fees

(a) The Title IVBD 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 IVBD 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 IVBD 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, 1, eff. April 20, 1995.

231.209. Payment for Services Not Affected by This Subchapter

Without regard to this subchapter and specifically Section 231.205, the Title IVBD 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 1.05, eff. Sept. 1, 1995.

231.210. Authority to Pay Litigation Expenses

(a) The Title IVBD 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 IVBD case.

(b) In making payments under this section, the Title IVBD 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 IVBD 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, 1, eff. April 20, 1995.

231.211. Award of Cost Against Nonprevailing Party in Title IVBD Case

(a) At the conclusion of a Title IVBD case, the court may assess attorneys 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 IVBD agency or a private attorney or political subdivision that has entered into a contract 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, 1, eff. April 20, 1995.

SUBCHAPTER D. LOCATION OF PARENTS AND RESOURCES

231.301. Title IVBD Parent Locator Services

(a) The parent locator service conducted by the Title IVBD 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 or medical 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 IVBD agency to provide services authorized under Title IVBD or an employee of the Title IVBD 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 76, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 56, eff. Sept. 1, 1999.

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) 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) 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. Sections 601B617 and 651B669):

(1) each licensing authority shall request and each applicant for a license shall provide the applicants 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 individuals or entitys social security number as required by Section 231.006, Family Code; 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 applicants social security number as required by Section 231.006, Family Code.

(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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 84, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 77, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, 6.28, eff. Sept. 1, 1999.

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 attorneys 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 78, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 859, 5, eff. Sept. 1, 1999.

231.305. Memorandum of Understanding on Child Support for Children Receiving Public Assistance

(a) The Title IVBD 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 IVBD 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, 1.07, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 556, 57, eff. Sept. 1, 1999.

231.306. Maximizing Medical Support Establishment and Collection by the Title IVBD Agency

- (a) On the installation of an automated child support enforcement system, the Title IVBD agency is strongly encouraged to:
 - (1) maximize the collection of medical 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, "medical support" has the meaning assigned by Section 101.020.

Added by Acts 1995, 74th Leg., ch. 341, 2.03, eff. Sept. 1, 1995.

231.307. Financial Institution Data Matches

- (a) The Title IV-D agency shall develop a system meeting the requirements of 42 U.S.C. Section 666(a)(17) for the quarterly exchange of data with financial institutions doing business in the state to identify an account of an obligor owing past-due child support and enforce support obligations against the obligor.
- (b) The Title IV-D agency by rule shall establish procedures for data matches authorized under this section.
- (c) The Title IVBD agency may enter into an agreement with one or more states to create a consortium for data matches authorized under this section. The Title IVBD 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 provided under Subchapter G, Chapter 157, or otherwise acting in good faith to comply with the Title IVBD 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 42 U.S.C. Section 669a(d)(1); and

(2) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

Added by Acts 1997, 75th Leg., ch. 911, 79, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 58, eff. Sept. 1, 1999.

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, 21, eff. Sept. 1, 1997.

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, 21, eff. Sept. 1, 1997.

231.310. Interagency Work Group

(a) The Title IV-D agency shall establish a work group to facilitate the sharing of data and resources to locate parents and relatives of children served by the Title IV-D agency and other health and human services agencies.

(b) The work group shall consist of representatives from the Title IV-D agency, the Department of Protective and Regulatory Services, the Texas Department of Human Services, the Texas Department of Health, the Texas Workforce Commission, the Texas Department of Public Safety, the Texas Rehabilitation Commission, and the Texas Department of Criminal Justice.

(c) The commissioner of human services or the commissioner's designee shall serve as the work group's presiding officer.

(d) The work group shall evaluate the procedures used by each agency in the work group to locate parents and relatives of children served by the agencies and develop a mechanism to ensure that each agency in the work group, or any private contractor performing location functions for an agency, is able to access information in the database of each other agency without paying a fee.

(e) The work group shall evaluate opportunities for using outside contracting and coordinating efforts with other community resources.

(f) To the extent possible, the Department of Protective and Regulatory Services and the Title IV-D agency shall use outside contractors and community resources to locate parents in child protection and child support cases.

Added by Acts 1999, 76th Leg., ch. 228, 2, eff. Sept. 1, 1999.

CHAPTER 232. SUSPENSION OF LICENSE FOR FAILURE TO PAY CHILD SUPPORT OR COMPLY WITH SUBPOENA

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 suspension, revocation, forfeiture, or termination by the issuing 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; 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 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 a license.

(4) "Subpoena" means a subpoena issued in a parentage determination or child support proceeding under this title.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 82, eff. Sept. 1, 1997.

232.002. Licensing Authorities Subject to Chapter

The following are licensing authorities subject to this chapter:

- (1) Department of Agriculture;
- (2) Texas Commission on Alcohol and Drug Abuse;
- (3) Texas Alcoholic Beverage Commission;
- (4) Texas Appraiser Licensing and Certification Board;
- (5) Texas Board of Architectural Examiners;
- (6) State Board of Barber Examiners;
- (7) Texas Board of Chiropractic Examiners;
- (8) Comptroller of Public Accounts;
- (9) Texas Cosmetology Commission;
- (10) Court Reporters Certification Board;
- (11) State Board of Dental Examiners;
- (12) Texas State Board of Examiners of Dietitians;
- (13) Texas Funeral Service Commission;
- (14) Texas Department of Health;
- (15) Texas Department of Human Services;
- (16) Texas Board of Professional Land Surveying;
- (17) Texas Department of Licensing and Regulation;
- (18) Texas State Board of Examiners of Marriage and Family Therapists;
- (19) Texas State Board of Medical Examiners;
- (20) Midwifery Board;
- (21) Texas Natural Resource Conservation Commission;

- (22) Board of Nurse Examiners;
- (23) Texas Board of Occupational Therapy Examiners;
- (24) Texas Optometry Board;
- (25) Parks and Wildlife Department;
- (26) Texas State Board of Examiners of Perfusionists;
- (27) Texas State Board of Pharmacy;
- (28) Texas Board of Physical Therapy Examiners;
- (29) Texas State Board of Plumbing Examiners;
- (30) Texas State Board of Podiatric Medical Examiners;
- (31) Polygraph Examiners Board;
- (32) Texas Board of Private Investigators and Private Security Agencies;
- (33) Texas State Board of Examiners of Professional Counselors;
- (34) Texas Board of Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and Audiology;
- (45) Texas Structural Pest Control Board;
- (46) Board of Tax Professional Examiners;

- (47) Secretary of State;
- (48) Supreme Court of Texas;
- (49) Texas Transportation Commission;
- (50) State Board of Veterinary Medical Examiners;
- (51) Board of Vocational Nurse Examiners;
- (52) Texas Ethics Commission;
- (53) Advisory Board of Athletic Trainers;
- (54) State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
- (55) Texas Board of Licensure for Professional Medical Physicists;
- (56) Texas Department of Insurance;
- (57) Texas Board of Orthotics and Prosthetics; and

Text of subdiv. (58) as added by Acts 1999, 76th Leg., ch. 1254, 4

- (58) savings and loan commissioner.

Text of subdiv. (58) as added by Acts 1999, 76th Leg., ch. 1477, 23

- (58) Texas Juvenile Probation Commission.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, 7.22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1280, 1.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1288, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1254, 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1477, 23, eff. Sept. 1, 1999.

232.003. Suspension of License

(a) A court or the Title IVBD agency may issue an order suspending a license as provided by this chapter if an individual who is an obligor:

- (1) has a child support arrearage equal to or greater than the total support due for 90 days under a support order;
- (2) has been provided an opportunity to make payments toward the child support arrearage under a court order or an 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 license as provided by this chapter if an individual has failed, after receiving appropriate notice, to comply with a subpoena.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995; Amended by Acts 1997, 75th Leg., ch. 420, 22, 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 83, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 59, eff. Sept. 1, 1999.

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 90 days under a support order.

(b) In a Title IVBD case, the petition shall be filed with the Title IVBD 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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 84, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 60, eff. Sept. 1, 1999.

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 type, and if known, number of any license the individual is believed to hold and the name of the licensing authority that issued the license; 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 subpoena.

(b) A petition under this chapter may include as an attachment a copy of:

- (1) the record of child support payments maintained by the Title IV-D registry or local registry; or
- (2) the subpoena with which the individual has failed to comply, together with proof of service of the subpoena.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 85, eff. Sept. 1, 1997.

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 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. 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 OF LICENSE SUSPENSION MAY BE RENDERED."

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 86, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 178, 11, eff. Aug. 30, 1999.

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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 87, eff. Sept. 1, 1997.

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 IVBD agency shall render an order suspending the license unless the individual:

(1) proves that all arrearages and the current months support have been paid;

(2) shows good cause for failure to comply with the subpoena; or

(3) establishes an affirmative defense as provided by Section 157.008(c).

(b) The court or Title IV-D agency may stay an order suspending a license conditioned on the individuals compliance with:

(1) a reasonable repayment schedule that is incorporated in the order; or

(2) the requirements of a reissued and delivered subpoena.

(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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 88, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 556, 61, eff. Sept. 1, 1999.

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:

(1) respond to a notice issued under Section 232.006;

(2) request a hearing; or

(3) appear at a hearing.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 420, 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 89, eff. Sept. 1, 1997.

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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

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 drivers license under this chapter is governed by this chapter and not by the general licensing provisions of Chapter 521, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, 30.184, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 911, 90, eff. Sept. 1, 1997.

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; or

(2) the requirements of a reissued subpoena.

(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 or the reissued subpoena.

(d) If the court or Title IV-D agency finds that the individual is not in compliance with the terms of the repayment plan or reissued subpoena, 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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 91, eff. Sept. 1, 1997.

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 license if the individual has:

(1) paid all delinquent child support or has established a satisfactory payment record; or

(2) complied with the requirements of a reissued subpoena.

(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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 92, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 976, 9, eff. Sept. 1, 1997.

232.014. Fee by Licensing Authority

A licensing authority may charge a fee to an individual who is the subject of an order suspending license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

Added by Acts 1995, 74th Leg., ch. 655, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 911, 93, eff. Sept. 1, 1997.

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 manner agreed to by the Title IV-D agency and the licensing authority.

(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, 85, eff. Sept. 1, 1995.

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, 5.03, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, 85, eff. Sept. 1, 1995.

CHAPTER 233. CHILD SUPPORT REVIEW PROCESS TO ESTABLISH OR ENFORCE SUPPORT OBLIGATIONS

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 and medical 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) The state case registry shall provide to a custodial parent under Subsection (a) who makes a request for information or, to the extent provided by federal law, to an attorney, friend of the court, guardian ad litem, or domestic relations office designated by the parent any information in the registry required by 42 U.S.C. Section 654a(e) concerning the parents case.

(c) To the extent permitted by federal law, the state case registry shall provide the information described by Subsection (b) to a domestic relations office or friend of the court that requests information regarding a case described by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.401 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 62, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.402 and amended by Acts 1997, 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.403 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.404 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.405 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 63, eff. Sept. 1, 1999.

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;

(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;

(4) include an affidavit of financial resources to be executed by the recipient; and

(5) include a request that the recipient designate, on a form provided by the Title IV-D agency, an address for mailing any subsequent notice to the recipient.

(b) In addition to the information required by Subsection (a), the notice of child support review must inform the recipient that:

(1) the information requested on the form must be 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 information 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.406 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.407 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.408 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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 and for medical 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.409 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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 IVBD 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 IVBD agency may file the child support order for child support and for medical support for the child as provided by Chapter 154 according to the information available to the agency.

- (c) The Title IVBD agency may schedule a negotiation conference without a request from a party.
- (d) The Title IVBD agency shall schedule a negotiation conference on the timely request of a party.
- (e) The Title IVBD 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.

Added by Acts 1999, 76th Leg., ch. 556, 64, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.410 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.411 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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 request a court hearing on a nonagreed order at any time before the 20th day after the date a petition for confirmation of the order is filed; and

(6) a party may file a motion for a new trial at any time before the 30th day after an order is confirmed by the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.412 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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.

(b) If it has been three years since a child support order was rendered or last modified and the amount of the child support award under the order differs by either 20 percent or \$100 from the amount that would be awarded under the child support guidelines, the Title IV-D agency shall 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.413 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.414 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.415 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.416 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 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) A child support review order that establishes or modifies an amount of previously ordered support must include the findings required by Section 154.130.

(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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.417 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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 and the making of a record on the petition for confirmation;

(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 KNOW THAT I DO NOT HAVE TO SIGN 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.418 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 65, eff. Sept. 1, 1999.

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.419 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 66, eff. Sept. 1, 1999.

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 IVBD 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.420 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 67, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.421 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.422 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.423 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

233.024. Confirmation of Agreed Order

(a) If the court finds that all parties have appropriately agreed to a child support review order and that there is waiver of service, the court shall sign the order not later than the third day after the filing of the order.

(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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.424 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.425 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

233.026. Time for Court Hearing

A 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 last party to be served files a timely request for a court hearing.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.426 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

233.027. Order After Hearing; Effect of Confirmation Order

(a) After the hearing on the confirmation of a nonagreed child support review order, the court shall:

(1) if the court finds that the order should be confirmed, immediately sign a confirmation order and enter the order as an order of the court;

(2) if the court finds that the relief granted in the 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) On the signing of a confirmation order by the judge of the court, the child support review order becomes a final order of the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.427 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 80, eff. Sept. 1, 1997.

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, 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 parentage testing does not exclude the alleged parent and the results of a verified written report of a parentage 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.428 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 341, 2.04, eff. Sept. 1, 1995.

Redesignated from V.T.C.A., Family Code 231.429 and amended by Acts 1997 75th Leg., ch. 911, 80, eff. Sept. 1, 1997.

CHAPTER 234. STATE CASE REGISTRY, DISBURSEMENT UNIT, AND DIRECTORY OF NEW HIRES

SUBCHAPTER A. UNIFIED STATE CASE REGISTRY AND DISBURSEMENT UNIT

234.001. Establishment and Operation of State Case Registry and State Disbursement Unit

(a) The Title IVBD 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.

(b) The state case registry shall maintain records of child support orders in Title IVBD 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 IVBD cases and other cases as required by law;

- (2) forward child support payments as required by law;
- (3) maintain child support payment records made through the state disbursement unit; and
- (4) make available to a local registry each day in a manner determined by the Title IVBD agency with the assistance of the work group established under Section 234.003 the following information:
 - (A) the cause number of the suit under which withholding is required;
 - (B) the payors name and social security number;
 - (C) the payees 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.

Added by Acts 1997, 75th Leg., ch. 911, 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 68, eff. Sept. 1, 1999.

234.002. Integrated System for Child Support and Medical Support Enforcement

The statewide integrated system for child support and medical 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, 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 68, eff. Sept. 1, 1999.

234.003. Work Group; Cooperation Required

(a) The Title IVBD agency shall convene a work group to develop procedures for the establishment and operation of the state case registry and state disbursement unit. The work group shall consist of representatives of the judiciary, district clerks, domestic relations offices, and the bureau of vital statistics, as well as other county and state agencies, and other appropriate entities, identified by the Title IVBD agency. To the extent possible, the work group shall consolidate the reporting of information relating to court orders required of clerks of courts under this title.

(b) The work group shall meet at least quarterly.

(c) A work group member or the members designee may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the members duties under this section.

(d) 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.

(e) This section expires December 31, 2000.

Added by Acts 1997, 75th Leg., ch. 911, 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 556, 68, eff. Sept. 1, 1999.

234.004. Contracts and Cooperative Agreements

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.

Added by Acts 1997, 75th Leg., ch. 911, 94, eff. Sept. 1, 1997.

234.006. Effective Date and Procedures

Text of section as added by Acts 1999, 76th Leg., ch. 556, 68

The Title IVBD agency shall, in cooperation with the work group established under Section 234.003, adopt rules, in compliance with federal law, that establish the definitions for, and the date of and the procedures for:

- (1) the operation of the state case registry and the state disbursement unit; and
- (2) the return of payments made in error or delivered to the state disbursement unit with insufficient information for disbursement.

Added by Acts 1999, 76th Leg., ch. 556, 68, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 1072, 6, see 234.006, post.

234.006. Direct Deposit of Child Support Payments

Text of section as added by Acts 1999, 76th Leg., ch. 1072, 6

- (a) The state disbursement unit authorized under this chapter may transmit a child support payment to an obligee by electronic funds transfer if the obligee maintains an account with a financial institution.
- (b) The work group convened under this subchapter may develop a plan to assist an obligee who does not have an account with a financial institution to obtain an account.
- (c) The work group may determine whether it is feasible and cost-effective for the state to administer an electronic benefits transfer system for child support obligees and may recommend implementation of such a system to the Title IV-D agency.
- (d) After receiving any recommendations by the work group under Subsection (c), the Title IV-D agency or the vendor selected by the Title IV-D agency to operate the state disbursement unit may provide for electronic benefits transfer, if the request for proposals issued by the Title IV-D agency and any contract resulting from the selection of a vendor to provide the services specified in the request for proposals provides for electronic benefits transfer.
- (e) The work group may recommend and the Title IV-D agency may establish procedures to implement this section.
- (f) The Title IV-D agency, after receiving the recommendation of the work group, may require an obligee to receive payments by direct deposit to the obligee's bank account or by electronic benefits transfer to an account established by the Title IV-D agency or the state disbursement unit if the account is established at no cost to the obligee.

Added by Acts 1999, 76th Leg., ch. 1072, 6, Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 556, 68, see 234.006, ante.

234.007. Notice of Place of Payment

Text of section as added by Acts 1999, 76th Leg., ch. 556, 68

(a) The Title IVBD agency shall notify the courts that the state disbursement unit has been established. After receiving notice of the establishment of the state disbursement unit, a court that orders income to be withheld for child support shall order that all income withheld for child support be paid to the state disbursement unit.

(b) In order to redirect payments from a local registry to the state disbursement unit after the date of the establishment of the state disbursement unit, the Title IVBD 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.

(c) A copy of the notice under Subsection (b) shall be filed with the court of continuing jurisdiction and with the local child support registry.

(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.

Added by Acts 1999, 76th Leg., ch. 556, 68, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 1072, 6, see 234.007, post.

234.007. Use of Electronic Benefits Transfer for Child Support Payments

Text of section as added by Acts 1999, 76th Leg., ch. 1072, 6

The Title IV-D agency, in coordination with the Texas Department of Human Services and the comptroller of public accounts, shall study the use of an existing electronic benefits transfer system to determine the advisability of and method for implementation of a debit card child support system. If it is determined that such a system is feasible and cost-effective, these agencies shall begin implementation of such a system. These agencies must report their findings and progress to the legislature by December 1, 2000.

Added by Acts 1999, 76th Leg., ch. 1072, 6, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 556, 68, see 234.007, ante.

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 IVBD 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.

Added by Acts 1999, 76th Leg., ch. 556, 68, eff. Sept. 1, 1999.

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, 68, eff. Sept. 1, 1999.

SUBCHAPTER B. STATE DIRECTORY OF NEW HIRES

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)). 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)).

Added by Acts 1997, 75th Leg., ch. 911, 94, eff. Sept. 1, 1997.

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, 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 178, 12, eff. Aug. 30, 1999.

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, 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 178, 13, eff. Aug. 30, 1999.

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, 94, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 178, 14, eff. Aug. 30, 1999.

CHAPTER 235. SHARING INFORMATION IN STATE CASE REGISTRY

235.001. Request for Information

(a) The state case registry shall provide information under this chapter on the written request of a custodial parent whose case:

(1) is included in the state case registry established under 42 U.S.C. Section 654a and for whom the Title IV-D agency is not providing enforcement services; or

(2) would otherwise not be required to be included in the state case registry under 42 U.S.C. Section 654a but who has applied for inclusion under Section 235.002.

(b) The state case registry shall provide to a custodial parent under Subsection (a) who makes a request for information or to an attorney, friend of the court, guardian ad litem, or domestic relations office designated by the parent any information in the registry concerning the parents case, including:

(1) the noncustodial parents address, social security number, and employers name and address;

(2) the amount and location of real and personal property owned by the noncustodial parent;

(3) the name and address of financial institutions in which the noncustodial parent has an account and each account number; and

(4) any other information the disclosure of which is not specifically prohibited by federal law.

Added by Acts 1997, 75th Leg., ch. 420, 26, eff. Sept. 1, 1997. Renumbered from 233.001 by Acts 1999, 76th Leg., ch. 62, 19.01(24), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, 19.02(4), eff. Sept. 1, 1999.

235.002. Request to Include Case in Registry

The case of a custodial parent whose case would otherwise not be included in the state case registry under 42 U.S.C. Section 654a may be included in the state case registry by making a written request to the registry either directly or through an attorney, friend of the court, guardian ad litem, or domestic relations office designated by the custodial parent. The request must be accompanied by a certified copy of the court order requiring the payment of child support.

Added by Acts 1997, 75th Leg., ch. 420, 26, eff. Sept. 1, 1997. Renumbered from 233.002 by Acts 1999, 76th Leg., ch. 62, 19.01(24), eff. Sept. 1, 1999.

235.003. Application for Services Not Required

The Title IV-D agency may not require an application for services as a condition for:

- (1) releasing information under Section 235.001; or
- (2) including a case in the state case registry under Section 235.002.

Added by Acts 1997, 75th Leg., ch. 420, 26, eff. Sept. 1, 1997. Renumbered from 233.003 by Acts 1999, 76th Leg., ch. 62, 19.01(24), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, 19.02(5), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 859, 6, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1191, 3, eff. June 18, 1999.

235.004. Fees

(a) The state case registry may charge a fee for:

- (1) including in the registry a child support case entered in the registry under Section 235.002; and
- (2) providing information concerning a case as authorized by Section 235.001.

(b) The amount of a fee under this section may not exceed the actual costs incurred by the state case registry in providing the services.

Added by Acts 1997, 75th Leg., ch. 420, 26, eff. Sept. 1, 1997. Renumbered from 233.004 by Acts 1999, 76th Leg., ch. 62, 19.01(24), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, 19.02(6), eff. Sept. 1, 1999.

CHAPTER 236. COMPETITIVE BIDDING FOR CHILD SUPPORT COLLECTION SERVICES

236.001. Definition

In this chapter, "council" means the State Council on Competitive Government.

Added by Acts 1997, 75th Leg., ch. 420, 27, eff. Sept. 1, 1997. Renumbered from 234.001 by Acts 1999, 76th Leg., ch. 62, 19.01(25), eff. Sept. 1, 1999.

236.002. Powers and Duties of Council

(a) The council shall:

- (1) establish an initiative called "Kids Cant Wait" to increase child support enforcement;
 - (2) identify child support enforcement functions performed by the Title IV-D agency that may be competitively bid;
 - (3) establish guidelines for referral of child support enforcement cases to a contractor;
 - (4) after consulting with the Title IV-D agency, make recommendations regarding competitive bidding of child support enforcement functions that are identified under Subdivision (2);
 - (5) consider the benefits of the states participation in an electronic parent locator network or a similar national service designed to locate parents who owe child support;
 - (6) study the feasibility of cost recovery options in child support collection actions for children who do not receive public assistance; and
 - (7) engage in other activities necessary for the administration of this chapter.
- (b) The Title IV-D agency shall coordinate with the council regarding competitive bidding of child support enforcement functions identified under this section.
 - (c) A member of the council may designate an employee of the state agency represented by the member to perform any of the members powers or duties under this section.
 - (d) The Title IV-D agency shall cooperate with the council if requested by the council.
 - (e) The council and the Title IV-D agency shall report not later than October 1, 1998, to the presiding officer of each house of the legislature the results of the councils efforts under this section.

Added by Acts 1997, 75th Leg., ch. 420, 27, eff. Sept. 1, 1997. Renumbered from 234.002 by Acts 1999, 76th Leg., ch. 62, 19.01(25), eff. Sept. 1, 1999.

236.003. Child Support Collection Agreement

The Title IV-D agency or a contractor awarded a contract under this chapter to collect child support may enter into an agreement with a person liable for the payment of child support. The agreement may relate to any matter that may be adjudicated by a court, including:

- (1) the determination of paternity;
- (2) the determination of the amount of child support due;
- (3) the method of making child support payments;
- (4) the imposition of income garnishment or withholding;
- (5) the payment of fees;
- (6) the reimbursement of costs; and
- (7) other child support enforcement matters permitted by state or federal law.

Added by Acts 1997, 75th Leg., ch. 420, 27, eff. Sept. 1, 1997. Renumbered from 234.003 by Acts 1999, 76th Leg., ch. 62, 19.01(25), eff. Sept. 1, 1999.

SUBTITLE E. PROTECTION OF THE CHILD

CHAPTER 261. INVESTIGATION OF REPORT OF CHILD ABUSE OR NEGLECT

SUBCHAPTER A. GENERAL PROVISIONS

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;

(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;

(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; or

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code.

(2) "Department" means the Department of Protective and Regulatory Services.

(3) "Designated agency" means the agency designated by the court as responsible for the protection of children.

(4) "Neglect" includes:

(A) 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;

(B) the following acts or omissions by a person:

(i) 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;

(ii) 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;

(iii) 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; or

(iv) 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

(C) 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.

(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; or

(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.

(6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

(7) "Board" means the Board of Protective and Regulatory Services.

(8) "Born addicted to alcohol or a controlled substance" means a child:

(A) 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

(B) who, after birth as a result of the mothers use of the controlled substance or alcohol:

(i) experiences observable withdrawal from the alcohol or controlled substance;

(ii) exhibits observable or harmful effects in the childs physical appearance or functioning; or

(iii) exhibits the demonstrable presence of alcohol or a controlled substance in the childs bodily fluids.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 86, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 63, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, 19.01(26), eff. Sept. 1, 1999.

261.002. Central Registry

(a) The department shall establish and maintain in Austin a central registry of reported cases of child abuse or neglect.

(b) The department may adopt rules necessary to carry out this section. The rules shall provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

261.004. Statistics of Abuse and Neglect of Children

(a) The department shall prepare and disseminate statistics by county relating to the departments activities under this subtitle and include the information specified in Subsection (b) in an annual report available to the public.

(b) The department shall report the following information:

(1) the number of initial phone calls received by the department alleging abuse and neglect;

(2) the number of children reported to the department as having been abused and neglected;

(3) the number of reports received by the department alleging abuse or neglect and assigned by the department for investigation;

- (4) of the children to whom Subdivision (2) applies:
- (A) the number for whom the report was substantiated;
 - (B) the number for whom the report was unsubstantiated;
 - (C) the number for whom the report was determined to be false;
 - (D) the number who did not receive services from the department under a state or federal program;
 - (E) the number who received services, including preventative services, from the department under a state or federal program; and
 - (F) the number who were removed from the child's home during the preceding year;
- (5) the number of families in which the child was not removed, but the child or family received services from the department;
- (6) the number of children who died during the preceding year as a result of child abuse or neglect;
- (7) of the children to whom Subdivision (6) applies, the number who were in foster care at the time of death;
- (8) the number of child protective services workers responsible for report intake, assessment, or investigation;
- (9) the response time by the department with respect to conducting an initial investigation of a report of child abuse or neglect;
- (10) the response time by the department with respect to commencing services to families and children for whom an allegation of abuse or neglect has been made;
- (11) the number of children who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child;
- (12) the number of cases pursued by the department in each stage of the judicial process, including civil and criminal proceedings and the results of each proceeding; and
- (13) the number of children for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child.
- (c) The department shall compile the information specified in Subsection (b) for the preceding year in a report to be submitted to the legislature and the general public not later than February 1 of each year.

Added by Acts 1997, 75th Leg., ch. 1022, 64, eff. Sept. 1, 1997.

SUBCHAPTER B. REPORT OF ABUSE OR NEGLECT; IMMUNITIES

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, 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.

(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, 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 87, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 162, 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 65, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, 6.29, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 21, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 88, eff. Sept. 1, 1995.

261.103. Report Made to Appropriate Agency

(a) Except as provided by Subsection (b), a report shall be made to:

(1) any local or state law enforcement agency;

(2) the department if the alleged or suspected abuse 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 abuse or neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

(b) A report may be made to the Texas Youth Commission 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 commission concerning the child's alleged abuse of another child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 89, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1477, 24, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 90, eff. Sept. 1, 1995.

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 or the designated agency.

(b) The department or designated agency 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.

(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.

(e) In cooperation with the department, the Texas Youth Commission by rule shall adopt guidelines for identifying a report made to the commission 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 commission to consider the severity and immediacy of the alleged abuse or neglect of the child victim.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 66, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1477, 25, eff. Sept. 1, 1999.

261.1055. Notification of District Attorneys

(a) A district attorney may inform the department or designated agency 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 or designated agency shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney as requested and the department or designated agency shall forward a copy of the reports to the district attorney on request.

Added by Acts 1997, 75th Leg., ch. 1022, 67, eff. Sept. 1, 1997.

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 persons responsibilities.

(c) A person who reports the persons 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 91, eff. Sept. 1, 1995.

261.107. False Report; Penalty

(a) A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section is a Class A misdemeanor 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 state jail felony.

(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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 92, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 68; Acts 1999, 76th Leg., ch. 62, 6.30, eff. Sept. 1, 1999.

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 attorneys 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 attorneys fees and other expenses related to the defense of the claim.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

261.109. Failure to Report; Penalty

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and knowingly fails to report as provided in this chapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER C. CONFIDENTIALITY AND PRIVILEGED COMMUNICATION

261.201. Confidentiality and Disclosure of Information

(a) 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.

(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.

(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 state 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.

(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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 93, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 12, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 69, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 22, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

SUBCHAPTER D. INVESTIGATIONS

261.301. Investigation of Report

(a) With assistance from the appropriate state or local law enforcement agency, the department or designated agency 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 or neglect 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 or neglect 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 department may 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.

(e) As necessary to provide for the protection of the child, the department or designated agency 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 of serious physical or sexual abuse of a child shall be conducted jointly by an investigator from the appropriate local law enforcement agency and the department or 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 Subsection (f) 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 Subsection (f).

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 94, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 943, 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 70, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1137, 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 23, eff. Sept. 1, 1999.

261.3015. Flexible 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 board by rule shall establish a flexible response system to allow the department to allocate resources by investigating serious cases of abuse and neglect and providing assessment and family preservation services in less serious cases.

(b) The classification under the flexible response system of a case may be changed as warranted by the circumstances.

(c) The department may implement the flexible response system by establishing a pilot program in a single department service region. The department shall study the results of the system in the region in determining the method by which to implement the system statewide.

Added by Acts 1997, 75th Leg., ch. 1022, 71, eff. Sept. 1, 1997.

261.3019. Pilot Programs for Investigations of Child Abuse

Text of section effective until September 1, 2001

(a) On or after September 1, 1997, but not later than March 1, 1998, the department shall enter into two agreements, one with a sheriff of a county with a population of not less than 500,000 and if necessary for

jurisdictional purposes any other law enforcement agency, and one with a sheriff of a county with a population of 25,000 or less and if necessary for jurisdictional purposes any other law enforcement agency, under which the sheriff or law enforcement agency shall conduct investigations of reports of abuse. The commissioners court of a county that is eligible to establish a pilot program and that intends to do so shall inform the department of the countys interest.

(b) An agreement under this section shall:

- (1) specify the respective roles of law enforcement and department staff in the investigative process;
- (2) provide for the department to assist in the removal of a child under Chapter 262 as necessary for the protection of the child;
- (3) provide for the use of any available childrens advocacy center or multidisciplinary team under Subchapter E, Chapter 264;
- (4) include provisions for the reimbursement by the department from available state and federal funds of the costs incurred by the sheriff or law enforcement agency in conducting an investigation of a report of abuse;
- (5) develop a plan for the transfer of calls received by the state child abuse hotline to the local law enforcement agency;
- (6) develop a plan to be submitted to the department that specifies the manner in which the countys law enforcement agency shall handle investigations, investigator training, and the processing of reports made to the local agency;
- (7) permit an additional contract with other appropriate local law enforcement agencies, if necessary for jurisdictional purposes, to implement the pilot program; and
- (8) contain provisions the department and the sheriff and law enforcement determine to be necessary and appropriate.

(c) The department may provide advice and technical assistance to the county to ensure that the county complies with state and federal law in implementing and operating the pilot program.

(d) Under each pilot program, the department shall provide to a participating county law enforcement agency:

(A) information regarding:

- (i) the average number of child abuse cases that are typically investigated; and
- (ii) staff and investigator training; and

(B) other assistance necessary to adequately implement and fund the pilot program.

(e) Under the pilot program, the commissioners court shall establish an independent local citizens review board composed of seven volunteers who represent the community, including members who have experience in matters relating to child abuse and including one member who is licensed as a psychologist, one member licensed as a medical or health professional, and one member who is a licensed or ordained priest, rabbi, or officer of a religious organization. A member of a review board may not be an employee of

or contract with any participating law enforcement agency or the department. The citizens review board shall prepare and make available to the public on an annual basis a report containing a summary of the activities of the board.

(f) The commissioners court may apply for any grants and research other sources of funding for the countys participation in the pilot program.

(g) An agreement under Subsection (a) is not required to provide for:

(1) the investigation of abuse alleged to have occurred in a facility or home regulated by the department under Chapter 42, Human Resources Code; or

(2) an investigation conducted under Section 261.404.

(h) The state auditor shall perform an audit and evaluation of the pilot program under this section. In preparing the evaluation, the auditor shall consider any report prepared by a citizens review board established under Subsection (e). The auditor shall report, not later than March 1, 2001, the results of the audit and evaluation to the presiding officers of both houses of the 77th Legislature and to the governor. The report must include an evaluation of the strengths and weaknesses of the pilot program and a recommendation about the feasibility of expanding the pilot program statewide.

(i) The department shall adopt rules necessary to perform the departments duties under this section.

(j) This section expires September 1, 2001.

Added by Acts 1997, 75th Leg., ch. 1022, 72, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 907, 38, eff. Sept. 1, 1999.

261.302. Conduct of Investigation

(a) The investigation may include:

(1) a visit to the childs 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 childs home or the childs school;

(2) include the presence of persons the department or designated agency determines are necessary; and

(3) include transporting the child for purposes relating to the interview or investigation.

(c) The investigation may include an interview with the childs 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 childs 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 alleged to be a victim of physical abuse or sexual abuse 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 95, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 13, 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 73, eff. Sept. 1, 1997.

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 or designated agency.

(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 or designated agency, 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 B1 shall release to the department or designated agency, 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 96, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 24, eff. Sept. 1, 1999.

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 and 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, 1, eff. April 20, 1995.

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 B1 has a history of medical or mental illness.

(b) If the parent or person does not consent to an examination or allow the department or designated agency to have access to medical or mental health records requested by the department or agency, the court having family law jurisdiction, for good cause shown, shall order the examination to be made or that the department or agency 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 or designated agency 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, 6, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 25, eff. Sept. 1, 1999.

261.306. Removal of Child From State

(a) If the department or designated agency 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 or designated agency 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 or designated agency 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, 1, eff. April 20, 1995.

261.307. Information Relating to Investigation Procedure

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 a brief and easily understood summary of:

(1) the departments 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;

(2) the persons right to file a complaint with the department or to request a review of the findings made by the department in the investigation;

(3) the persons right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation;

(4) the persons right to seek legal counsel;

(5) references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and

(6) the process the person may use to acquire access to the child if the child is removed from the home.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

261.308. Submission of Investigation Report

(a) The department or designated agency shall make a complete written report of the investigation.

(b) If sufficient grounds for filing a suit exist, the department or designated agency shall submit the report, together with recommendations, to the court, the district attorney, and the appropriate law enforcement agency.

(c) On receipt of the report and recommendations, the court may direct the department or designated agency to file a petition requesting appropriate relief as provided in this title.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 97, eff. Sept. 1, 1995.

261.309. Review of Department Investigations

(a) The department 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 persons case or files a complaint relating to the conduct of the departments staff or to department policy, the department shall conduct an informal review to clarify the persons status or resolve the complaint. The immediate supervisor of the employee who conducted the child abuse or neglect investigation or against whom the complaint was filed 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 departments investigation, the person who is alleged to have abused or neglected a child disputes the departments 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 departments original findings in the investigation.

(d) Unless 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 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. If a civil or criminal court proceeding or an ongoing criminal investigation 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, 1, eff. April 20, 1995.

261.310. Investigation Standards

(a) The department shall by rule develop and adopt voluntary 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) The professional training curriculum developed under this section shall include information concerning:

(1) physical abuse and neglect, including distinguishing physical abuse from ordinary childhood injuries;

(2) psychological abuse and neglect;

(3) available treatment resources; and

(4) the incidence and types of reports of child abuse and neglect that are received by the investigating agencies, including information concerning false reports.

(d) The standards shall recommend:

(1) that videotaped and audiotaped interviews with a suspected victim be uninterrupted;

(2) a maximum number of interviews with and examinations of a suspected victim;

(3) procedures to preserve evidence, including the original notes, videotapes, and audiotapes; and

(4) 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

261.311. Notice of Report

(a) When during an investigation of a report of suspected child abuse or neglect a representative of the department or the designated agency conducts an interview with or an examination of a child, the department or designated agency 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 or designated agency as a result of a preliminary investigation that did not include an interview or examination of the child, the department or designated agency 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 74, eff. Sept. 1, 1997.

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 five members who serve staggered two-year terms. Review team members are appointed by the director of the department and consist of community representatives and private citizens who live in the region for which the team is established. Each member must be a parent who has not been convicted of or indicted for an offense involving child abuse or neglect, has not been determined by the department to have engaged in child abuse or neglect, or is 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, 3, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 16, eff. Sept. 1, 1997.

261.3125. Investigations Coordinator

(a) The department shall employ in each region of the department for child protective services at least one child protective services investigations coordinator. The job responsibilities of the investigations coordinator must focus only 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 protective services investigations coordinator 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;

(2) monitor 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, 1, eff. Sept. 1, 1999.

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, 7, eff. Sept. 1, 1995.

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 persons right to request the department to remove information about the persons alleged role in the abuse or neglect report from the departments 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 departments records concerning the persons alleged role in the abuse or neglect report.

(c) The board shall adopt rules necessary to administer this section.

Added by Acts 1997, 75th Leg., ch. 1022, 75, eff. Sept. 1, 1997.

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, 17, eff. Sept. 1, 1997. Renumbered from 261.315 by Acts 1999, 76th Leg., ch. 62, 19.01(27), eff. Sept. 1, 1999.

SUBCHAPTER E. INVESTIGATIONS OF ABUSE OR NEGLECT IN CERTAIN FACILITIES

261.401. Agency Investigation

(a) A state agency that operates, licenses, certifies, or registers a facility in which children are located shall make a prompt, thorough investigation of a report that a child has been or may be abused or neglected in the facility. The primary purpose of the investigation shall be the protection of the child.

(b) A state agency shall adopt rules relating to the investigation and resolution of reports received as provided by this subchapter. The Health and Human Services Commission shall review and approve the rules to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 98, eff. Sept. 1, 1995.

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 or neglect 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 or neglected, the agency shall report the evidence to the appropriate law enforcement agency.

(d) 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 of child abuse and neglect in the facility.

(e) A state agency shall compile, maintain, and make available statistics on the incidence of child abuse and neglect in a facility operated by the state agency.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 99, eff. Sept. 1, 1995.

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 board.

(b) The board of a state agency that operates a facility in which children are located shall ensure that the procedure for investigating abuse and neglect 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, 1, eff. April 20, 1995.

261.404. Investigations in Facilities Under Department of Mental Health and Mental Retardation

(a) The department shall investigate a report of abuse, neglect, or exploitation of a child receiving services:

(1) in a facility operated by the Texas Department of Mental Health and Mental Retardation;

(2) in or from a community center, a local mental health authority, or a local mental retardation authority;
or

(3) through a program providing services to that child by contract with a facility operated by the Texas Department of Mental Health and Mental Retardation, a community center, a local mental health authority, or a local mental retardation authority.

(b) The department shall investigate the report under rules developed jointly between the department and the Texas Department of Mental Health and Mental Retardation.

(c) The definitions of "abuse" and "neglect" prescribed by Section 261.001 do not apply to an investigation under this section.

(d) In this section, "community center," "local mental health authority," and "local mental retardation authority" have the meanings assigned by Section 531.002, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 751, 100, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 907, 39, eff. Sept. 1, 1999.

261.405. Investigations in Juvenile Justice Programs And Facilities

(a) A report of alleged abuse or neglect in a public or private juvenile pre-adjudication secure detention facility, including hold-over facilities, or public or private juvenile post-adjudication secure correctional facility, except for a facility operated solely for children committed to the Texas Youth Commission, shall be made to a local law enforcement agency for investigation. The local law enforcement agency shall immediately notify the Texas Juvenile Probation Commission of any report the agency receives.

(b) The Texas Juvenile Probation Commission shall conduct an investigation as provided by this chapter if the commission receives a report of alleged abuse or neglect in any program, including a juvenile justice alternative education program, operated wholly or partly by:

(1) a local juvenile probation department; or

(2) a private vendor operating under the authority of a county juvenile board in accordance with the standards adopted by the commission.

(c) In an investigation required under this section, the investigating agency shall have access to medical and mental health records as provided by Subchapter D1.

Added by Acts 1995, 74th Leg., ch. 751, 100, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 162, 2; , Acts 1997, 75th Leg., ch. 1374, 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, 7, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 26, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1477, 26, eff. Sept. 1, 1999.

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 written report of the departments investigation, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the schools governing body, and the school principal or director, unless the principal or director 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. Section 261.201(b) applies to the release of confidential information relating to the investigation of a report 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 Board of Protective and Regulatory Services shall adopt rules necessary to implement this section.

Added by Acts 1995, 74th Leg., ch. 751, 100, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, 8, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 27, eff. Sept. 1, 1999.

CHAPTER 262. PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY TO PROTECT HEALTH AND SAFETY OF CHILD

SUBCHAPTER A. GENERAL PROVISIONS

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 childs home or to make it possible to return a child to the childs home, the childs health and safety is the paramount concern.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 29, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 30, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 101, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 102, eff. Sept. 1, 1995.

262.006. Living Child After Abortion

(a) An authorized representative of the Department of Protective and Regulatory 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, 1, eff. April 20, 1995.

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 Protective and Regulatory 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 home 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, 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 685, 6, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, 12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 31, eff. Sept. 1, 1999.

262.008. Abandoned Children

(a) An authorized representative of the Department of Protective and Regulatory 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) 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 1997, 75th Leg., ch. 600, 4, eff. Jan. 1, 1998.

SUBCHAPTER B. TAKING POSSESSION OF CHILD

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 and that continuation in the home would be contrary to the child's welfare; and

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing or to make reasonable efforts to prevent or eliminate the need for the removal of the child.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 103, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 752, 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 1150, 14, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 33, eff. Sept. 1, 1999.

262.1015. Removal of Alleged Perpetrator; Offense

(a) If the department 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.

(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; and

(4) 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.

(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, 4, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 19, eff. Sept. 1, 1997.

262.102. Emergency Order Authorizing Possession of Child

(a) Before a court may, without prior notice and a hearing, issue a temporary restraining order or attachment 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 and that continuation in the home would be contrary to the child's welfare; and

(2) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, to hold an adversary hearing or to make reasonable efforts 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, 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 Chapter 71 for the protection of the child. In this subsection, "family violence" has the meaning assigned by Section 71.01.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 104, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 752, 2, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 1150, 15, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 34, eff. Sept. 1, 1999.

262.103. Duration of Temporary Restraining Order and Attachment

A temporary restraining order or attachment of the child issued under this chapter 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

262.104. Taking Possession of a Child in Emergency Without a Court Order

If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Protective and Regulatory 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;
- (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
- (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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 20, eff. Sept. 1, 1997.

262.105. Filing Petition After Taking Possession of Child in Emergency

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 working day after the date the child is taken into possession.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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 working 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 working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working 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 working day after the date the child is taken into possession, the child is considered to have been taken into possession by the Department of Protective and Regulatory 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 16, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 35, eff. Sept. 1, 1999.

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) 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 or the evidence shows that the child has been the victim of sexual abuse on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse in the future; and

(2) the nature of the emergency and the continuing danger to the welfare of the child make efforts to allow the child to remain with or return to the person entitled to possession of the child impossible or unreasonable.

(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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 105, eff. Sept. 1, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1374, 9, eff. Sept. 1, 1997.

262.109. Notice to Parent, Conservator, or Guardian

(a) The department 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 of Protective and Regulatory Services 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 working 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 the parents, conservators, or other custodians of the child could not be located; or

(2) for other good cause.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 76, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1150, 17, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 36, eff. Sept. 1, 1999.

262.110. Taking Possession of Child in Emergency With Intent to Return Home

(a) An authorized representative of the Department of Protective and Regulatory 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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 18, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 37, eff. Sept. 1, 1999.

262.111. Finding That Child Cannot Remain in or be Returned to Home

In the absence of a specific finding to the contrary, the issuance of a temporary restraining order or attachment pending a full adversary hearing or the issuance of an order after a full adversary hearing constitutes a finding by the court that for the child to remain in the home is contrary to the child's welfare or safety and that the emergency made efforts to prevent or eliminate the need for the removal of the child impossible or unreasonable.

Added by Acts 1995, 74th Leg., ch. 751, 106, eff. Sept. 1, 1995.

262.112. Expedited Hearing and Appeal

(a) The Department of Protective and Regulatory 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, 1, eff. Sept. 1, 1995.

Renumbered from V.T.C.A., Family Code 262.111 by Acts 1997, 75th Leg., ch. 165, 31.01(29), eff. Sept. 1, 1997.

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) reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and

(2) allowing the child to remain in the home would be contrary to the child's welfare.

Added by Acts 1999, 76th Leg., ch. 1150, 19, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 38, eff. Sept. 1, 1999.

SUBCHAPTER C. ADVERSARY HEARING

262.201. Full Adversary Hearing; Findings of the Court

(a) 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.

(b) 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 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 makes efforts to eliminate or prevent the child's removal impossible or unreasonable; and

(3) notwithstanding reasonable efforts to eliminate the need for the child's removal and enable the child to return home, there is a substantial risk of a continuing danger if the child is returned home.

(c) 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 and 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. If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order under Title 4 for the child. In this subsection, "family violence" has the meaning assigned by Section 71.004.

(d) In determining whether there is a continuing danger to the physical health or safety of the child, 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.

(e) 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.

(f) 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.

(g) 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 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 107, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 600, 5, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 1, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 752, 3, eff. June 17, 1997; Acts 1997, 75th Leg., ch. 1022, 77, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 78, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, 6.31, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, 20, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 39, eff. Sept. 1, 1999.

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 at an earlier date than provided by Subchapter D, Chapter 263, if the court finds that all reasonable efforts have been made to return the child to a parent or 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 is a victim of serious bodily injury or sexual abuse inflicted by the parent or by another person with the parents consent;

(3) the parent has engaged in conduct against the child or against 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 (indecent 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); or

(L) Section 43.26 (possession or promotion of child pornography);

(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; or

(5) the parents parental rights with regard to another child have been involuntarily terminated based on a finding that the parents conduct violated Section 161.001(1)(D) or (E) or a substantially equivalent provision of another states law.

(c) On finding that reasonable efforts to prevent or eliminate the need to remove the child or 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 Protective and Regulatory 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, 79, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1150, 21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 40, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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;

(2) if grounds exist for mandatory transfer from the court of continuing, exclusive jurisdiction under Section 155.201, order transfer of the suit from that court; 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 22, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 41, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

262.205. Hearing When Child Not in Possession of Governmental Entity

(a) In a suit requesting possession of a child after notice and hearing, the court may render a temporary restraining order as provided by Section 105.001. The suit shall be promptly set for hearing.

(b) After the hearing, the court may grant the request to remove the child from the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and

(2) allowing the child to remain in the home would be contrary to the child's welfare.

(c) If the court orders removal of the child from the child's home, the court shall:

(1) issue an appropriate temporary order under Chapter 105; and

(2) inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child.

(d) If citation by publication is required for a parent or alleged or probable father in an action under this chapter because the location of the person is unknown, the court may render a temporary order without regard to whether notice of the citation has been published.

(e) Unless it is not in the best interest of the child, the court shall place a child who has been removed under this section with:

(1) the child's noncustodial parent; or

(2) another relative of the child if placement with the noncustodial parent is inappropriate.

(f) If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under Title 4.

Added by Acts 1999, 76th Leg., ch. 1150, 23, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 42, eff. Sept. 1, 1999.

SUBCHAPTER D. EMERGENCY POSSESSION OF CERTAIN ABANDONED CHILDREN

262.301. Accepting Possession of Certain Abandoned Children

(a) An emergency medical services provider licensed under Chapter 773, Health and Safety Code, shall, without a court order, take possession of a child who is 30 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) An emergency medical services 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.

Added by Acts 1999, 76th Leg., ch. 1087, 2, eff. Sept. 1, 1999.

262.302. Notification of Possession of Abandoned Child

(a) Not later than the close of the first business day after the date on which an emergency medical services provider takes possession of a child under Section 262.301, the provider shall notify the Department of Protective and Regulatory 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).

Added by Acts 1999, 76th Leg., ch. 1087, 2, eff. Sept. 1, 1999.

262.303. Filing Petition After Accepting Possession of Abandoned Child

A child for whom the Department of Protective and Regulatory Services assumes care, control, and custody under Section 262.302 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.

Added by Acts 1999, 76th Leg., ch. 1087, 2, eff. Sept. 1, 1999.

CHAPTER 263. REVIEW OF PLACEMENT OF CHILDREN UNDER CARE OF DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

263.001. Definitions

(a) In this chapter:

(1) "Department" means the Department of Protective and Regulatory 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.

(4) "Substitute care" means the placement of a child who is in the conservatorship of the department or an authorized agency in care outside the child's home. The term includes foster care, institutional care, adoption, or placement with a relative of the child.

(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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 108, eff. Sept. 1, 1995.

263.002. Review of Placements by Court

In a suit affecting the parent-child relationship in which the department or an authorized agency 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 the conservatorship appointment and substitute care.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 109, eff. Sept. 1, 1995.

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, 5, eff. Sept. 1, 1995.

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 conservator, 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, 6, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 80, eff. Jan. 1, 1998.

SUBCHAPTER B. SERVICE PLAN

263.101. Department to File Service Plan

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 or other agency appointed as the managing conservator of a child shall file a service plan.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 24, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 43, eff. Sept. 1, 1999.

263.1015. Service Plan Not Required

A service plan is not required under this subchapter in a suit brought by the department for the termination of the parent-child relationship for a child who has been abandoned without identification and whose identity cannot be determined.

Added by Acts 1997, 75th Leg., ch. 600, 7, eff. Jan. 1, 1998.

263.102. Service Plan; Contents

(a) The service plan must:

(1) be specific;

(2) be in writing;

(3) be prepared by the department or other agency in conference with the child's parents;

(4) state appropriate deadlines;

(5) state whether the goal of the plan is:

(A) return of the child to the child's parents;

(B) termination of parental rights and placement of the child for adoption; or

(C) because of the child's special needs or exceptional circumstances, continuation of the child's care out of the child's home;

(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 or other agency'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 authorized agency toward meeting that goal;

(8) state the name of the person with the department or other agency whom the child's parents may contact for information relating to the child if other than the person preparing the plan; and

(9) prescribe any other term or condition that the department or other agency 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) If both parents are available but do not live in the same household and do not agree to cooperate with one another in the development of a service plan for the child, the department in preparing the service plan may provide for the care of the child in the home of either parent or the homes of both parents as the best interest of the child requires.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

263.103. Service Plan: Signing and Taking Effect

(a) Before the service plan is signed, the child's parents and the representative of the department or other agency shall discuss each term and condition of the plan.

(b) The child's parents and the person preparing the service plan shall sign the plan, and the department shall give each parent a copy of the service plan.

(c) If the department or other authorized agency determines that the child's parents are unable or unwilling to sign the service plan, the department may file the plan without the parents' signatures.

(d) The plan takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the department or other authorized agency files the plan without the parents' signatures.

(e) The service plan is in effect until amended by the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

263.104. Amended Service Plan

(a) The service plan may be amended at any time.

(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 or other authorized agency sign the plan; or

(2) the department or other authorized agency determines that the child's parents are unable or unwilling to sign the amended plan and files it without the parents' signatures.

(c) The amended service plan remains in effect until amended by the court.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

263.105. Review of Service Plan

(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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 44, eff. Sept. 1, 1999.

263.106. Court Implementation of Service Plan

The court may render appropriate orders to implement or require compliance with an original or amended service plan.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

SUBCHAPTER C. STATUS HEARING

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 before the date a status hearing is required by this section.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 8, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 3, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 81, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1150, 26, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 45, eff. Sept. 1, 1999.

263.202. Status Hearing; Findings

(a) If all parties entitled to citation and notice under this chapter were not served, the court shall make findings as to whether:

- (1) the department or other agency has exercised due diligence to locate all necessary persons; and
- (2) if only one parent is before the court, that parent has furnished to the department all available information necessary to locate an absent parent through the parental locator service.

(b) 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 or other agency 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; and

(2) the child's parents have reviewed and understand the service 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.

(c) The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings.

(d) If a service plan with respect to a parent has not been filed with the court, the court shall consider whether to waive the service plan under Section 262.2015.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 111, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 46, eff. Sept. 1, 1999.

SUBCHAPTER D. PERMANENCY HEARINGS

263.301. Notice

(a) Notice of a permanency hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing.

(b) The following persons are entitled to at least 10 days notice of a permanency hearing and are entitled to present evidence and be heard at the hearing:

- (1) the department;
- (2) the foster parent or director of the group home or institution 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;
- (6) a volunteer advocate appointed for the child under Chapter 107; and
- (7) any other person or agency named by the court to have an interest in the child's welfare.

(c) If a person entitled to notice under Chapter 102 or this section has not been served, the court shall review the department's or other agency's efforts at attempting to locate all necessary persons and requesting service of citation and the assistance of a parent in providing information necessary to locate an absent parent.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 10, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 5, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 83, eff. Jan. 1, 1998.

263.302. Child's Attendance at Hearing

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 11, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 6, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 84, eff. Jan. 1, 1998.

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 263.301(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.

Added by Acts 1997, 75th Leg., ch. 600, 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 7, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 85, eff. Jan. 1, 1998.

263.303. Permanency Progress Report

(a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney 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:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

(A) identify the date for dismissal of the suit under this chapter;

(B) provide:

(i) the name of any person entitled to notice under Chapter 102 who has not been served;

(ii) a description of the efforts by the department or another agency to locate and request service of citation; and

(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;

(C) evaluate the parties' compliance with temporary orders and with the service plan;

(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter; and

(F) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

(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 or other agency's report filed under Subsection (b). 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 112, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 13, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 8, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 86, eff. Jan. 1, 1998.

263.304. Initial Permanency Hearing; Time

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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 113, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 14, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 9, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 87, eff. Jan. 1, 1998.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 15, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 10, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 88, eff. Jan. 1, 1998.

263.306. Permanency Hearings: Procedure

(a) At each permanency hearing the court shall:

(1) identify all persons or parties present at the hearing or those given notice but failing to appear;

(2) review the efforts of the department or another agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

(C) obtaining the assistance of a parent in providing information necessary to locate an absent parent;

(3) return the child to the parent or parents if the child's parent or 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;

(4) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the placement of the child is in the child's best interest;

(5) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;

(6) evaluate the parties' compliance with temporary orders and the service plan;

(7) determine whether:

(A) the child continues to need substitute care;

(B) the child's current placement is appropriate for meeting the child's needs; and

(C) other plans or services are needed to meet the child's special needs or circumstances;

(8) if the child is placed in institutional care, determine whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(9) if the child is 16 years of age or older, order services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;

(10) determine plans, services, and further temporary orders necessary to ensure that a final order is rendered before the date for dismissal of the suit under this chapter; and

(11) determine the date for dismissal of the suit under this chapter and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

(b) The court shall also review the service plan, permanency report, and other information submitted at the hearing to:

(1) determine:

(A) the safety of the child;

(B) the continuing necessity and appropriateness of the placement;

(C) the extent of compliance with the case plan; and

(D) the extent of progress that has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care; and

(2) project 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 114, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 16, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 603, 11, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 89, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1390, 47, eff. Sept. 1, 1999.

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, the department, and other authorized agencies 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 or other agency;

(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, 1, eff. April 20, 1995.

SUBCHAPTER E. FINAL ORDER FOR CHILD UNDER DEPARTMENT CARE

263.401. Dismissal After One Year; Extension

- (a) Unless the court has rendered a final order or granted an extension under Subsection (b), 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 shall dismiss 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.
- (b) On or before the time described by Subsection (a) for the dismissal of the suit, the court may extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described by Subsection (a), if the court has continuing jurisdiction of the suit and the appointment of the department as temporary managing conservator is in the best interest of the child. If the court grants an extension, the extension order must also:
- (1) schedule the new date for dismissal of the suit; and
 - (2) make further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit.
- (c) If the court grants an extension, the court shall render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension.
- (d) For purposes of this section, a final order is an order that:

- (1) requires that a child be returned to the child's parent;
- (2) names a relative of the child or another person as the child's managing conservator;
- (3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or
- (4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Added by Acts 1997, 75th Leg., ch. 600, 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 90, eff. Jan. 1, 1998.

263.402. 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 return the child to the child's parent;
- (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.

(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.

(c) If a child placed with a parent under this section must be moved from that home by the department before the dismissal of the suit or the rendering of a final order, the court shall, at the time of the move, 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 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, 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, 12, eff. Jan. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 90, eff. Jan. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, 48, eff. Sept. 1, 1999.

263.403. 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 being adopted;

(3) that the child has special medical or behavioral needs that make adoption of the child unlikely; and

(4) the needs and desires of the child.

Added by Acts 1997, 75th Leg., ch. 600, 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 90, eff. Jan. 1, 1998.

263.404. 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.

Added by Acts 1997, 75th Leg., ch. 600, 17, eff. Sept. 1, 1997.

SUBCHAPTER F. PLACEMENT REVIEW HEARINGS

263.501. Placement Review 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 placement review hearing at least once every six months until the child becomes an adult.

(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 placement review hearing at least once every six months until the date the child is adopted or the child becomes an adult.

(c) Notice of a placement review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to each person entitled to notice of the hearing.

(d) The following are entitled to not less than 10 days notice of a placement review hearing:

(1) the department;

(2) the foster parent or director of the group home or institution in which the child is residing;

(3) each parent of the child;

- (4) each possessory conservator or guardian of the child;
- (5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; and
- (6) any other person or agency named by the court as having an interest in the child's welfare.
- (e) The court may dispense with the requirement that the child attend a placement review hearing.

Added by Acts 1997, 75th Leg., ch. 600, 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 90, eff. Jan. 1, 1997.

263.502. Placement Review Report

- (a) Not later than the 10th day before the date set for a placement review hearing, the department or other authorized agency shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).
- (b) For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.

(c) The placement review report must:

- (1) evaluate whether the child's current placement is appropriate for meeting the child's needs;
- (2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;
- (3) identify the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living if the services are available in the community;
- (4) identify other plans or services that are needed to meet the child's special needs or circumstances; and
- (5) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

Added by Acts 1997, 75th Leg., ch. 600, 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 90, eff. Jan. 1, 1998.

263.503. Placement Review Hearings; Procedure

At each placement review hearing, the court shall determine whether:

- (1) the child's current placement is appropriate for meeting the child's needs;
- (2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;
- (3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances; and

(5) the department or authorized agency 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.

Added by Acts 1997, 75th Leg., ch. 600, 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 603, 12, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1022, 90, eff. Jan. 1, 1998.

CHAPTER 264. CHILD WELFARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

264.001. Definition

In this chapter, "department" means the Department of Protective and Regulatory Services.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.002. Duties of Department

(a) The department shall:

(1) promote the enforcement of all laws for the protection of abused and neglected children; and

(2) take the initiative in all matters involving the interests of children where adequate provision has not already been made.

(b) The department shall give special attention to the dissemination of information through bulletins and visits, where practical, to all agencies operating under a provision of law affecting the welfare of children.

(c) Through the county child welfare boards, the department shall work in conjunction with the commissioners courts, juvenile boards, and all other officers and agencies involved in the protection of children. The department may use and allot funds for the establishment and maintenance of homes, schools, and institutions for the care, protection, education, and training of children in conjunction with a juvenile board, a county or city board, or any other agency.

(d) The department shall visit and study the conditions in state-supported eleemosynary institutions for children and shall make actions for the management and operation of the institutions that ensure that the children receive the best possible training in contemplation of their earliest discharge from the institutions.

(e) The department may not spend state funds to accomplish the purposes of this chapter unless the funds have been specifically appropriated for those purposes.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.003. Memorandum of Understanding on Services for Multiproblem Children and Youth

(a) The Department of Protective and Regulatory Services, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Health, the Texas Youth Commission, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, the Texas Commission for the Blind, and the Central Education Agency shall adopt a joint memorandum of understanding to implement a system of local level interagency staffing groups to coordinate services for multiproblem children and youth.

(b) The memorandum must:

(1) clarify the financial and statutory responsibilities of each agency in relation to multiproblem children and youth, including subcategories of funding for different services such as prevention, family preservation and strengthening, emergency shelter, diagnosis and evaluation, residential care, after-care, information and referral, and investigation services;

(2) include a functional definition of "multiproblem children and youth";

(3) define procedures for interagency cost sharing;

(4) define procedures aimed at eliminating duplication of services relating to assessment and diagnosis, treatment, residential placement and care, and case management of multiproblem children and youth;

(5) define procedures for addressing disputes between the agencies that relate to the agencies areas of service responsibilities;

(6) provide that each local level interagency staffing group will include a local representative of the department and each agency and not more than five representatives of local private sector youth agencies;

(7) provide that if an agency is not able to provide all the services a child requires, the agency may submit the child's case history to the local level interagency staffing group for consideration;

(8) provide that a local level interagency staffing group may be called together by a representative of any member agency;

(9) provide that an agency may be excused from attending a meeting if the staffing group determines that the age or needs of the children or youth to be considered are clearly not within the agency's service responsibilities;

(10) provide that records that are used or developed by the department and other agencies and that relate to a particular child are confidential and may not be released to any other person or agency except as provided in this section or by other law; and

(11) provide a procedure that permits the department and other agencies to share confidential information while preserving the confidential nature of the information.

(c) The agencies that participate in the formulation of the memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(d) Not later than the last month of each state fiscal year, the department and the other agencies listed in this section shall review and update the memorandum.

(e) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.004. Allocation of State Funds

(a) The department shall establish a method of allocating state funds for childrens 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 childrens 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 childs family.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 23, eff. Sept. 1, 1997.

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 members 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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 24, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 25, eff. Sept. 1, 1997.

264.007. Cooperation With Department of Health and Human Services

The department is the state agency designated to cooperate with the United States Department of Health and Human Services in:

(1) establishing, extending, and strengthening public welfare services for the protection and care of abused or neglected children;

(2) developing state services for the encouragement and assistance of adequate methods of community child welfare organizations and paying part of the cost of district, county, or other local child welfare services in rural areas and in other areas of special need; and

(3) developing necessary plans to implement the services contemplated in this section and to comply with the rules of the United States Department of Health and Human Services under the federal Social Security Act (42 U.S.C. Section 651 et seq.).

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 116, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 91, eff. Sept. 1, 1997.

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 Texas Department of Human Services, 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, 6, eff. Sept. 1, 1995.

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, 26, eff. Sept. 1, 1997.

264.012. Burial Expenses for Child in Foster Care

(a) The department shall request that the parents pay reasonable and necessary burial expenses for a child for whom the department has been appointed managing conservator and who dies in foster care, including a request that if the parents have an insurance policy or a bank account for the child, that the parents spend the proceeds from the policy or money in the account on the burial expenses. If the parents cannot pay all or part of the burial expenses, the department shall spend funds appropriated for the child protective services program to pay reasonable and necessary burial expenses for the child.

(b) The department may accept donations, gifts, or in-kind contributions to cover the costs of any burial expenses for children for whom the department has been appointed managing conservator.

(c) This section does not apply to a foster parent.

Added by Acts 1997, 75th Leg., ch. 575, 26, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1248, 1, eff. Sept. 1, 1999.

SUBCHAPTER B. FOSTER CARE

264.101. Foster Care Payments

(a) The department may pay the cost of foster care for a child:

(1) for whom the department has initiated a suit and has been named managing conservator under an order rendered under this title,

who is a resident of the state, and who has been placed by the department in a foster home or child-care institution, as defined by Chapter 42, Human Resources Code; or

(2) who is under the placement and care of a state agency or political subdivision with which the department has entered into an agreement to reimburse the cost of care and supervision of the child.

(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(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 Board of Protective and Regulatory Services 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 is regularly attending high school, an institution of higher education, or a vocational or technical program.

(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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 27, eff. Sept. 1, 1997.

264.1015. Liability of Childs 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, 28, eff. Sept. 1, 1997.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

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, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 29, eff. Sept. 1, 1997.

264.105. Medical Services Payments

The department shall attempt to maximize the use of federal funding to provide medical care payments authorized by Section 264.101(c) for children for whom the department has been named managing conservator.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 30, eff. Sept. 1, 1997.

264.106. Contracts for Substitute Care Services

(a) The department shall:

- (1) assess the need for substitute care services throughout the state; and
- (2) contract with substitute care providers only to the extent necessary to meet the need for those services.

(b) Before contracting with a substitute care provider, the department shall determine whether:

- (1) community resources are available to support children placed under the providers care; and
- (2) the appropriate public school district has sufficient resources to support children placed under the providers care if the children will attend public school.

(c) In addition to the requirements of Section 40.058(b), Human Resources Code, a contract with a substitute care provider must include provisions that:

- (1) enable the department to monitor the effectiveness of the providers services; and
- (2) authorize the department to terminate the contract or impose sanctions for a violation of a provision of the contract that specifies performance criteria.

(d) In determining whether to contract with a substitute care provider, the department shall consider the providers performance under any previous contract for substitute care services between the department and the provider.

(e) In this section, "substitute care provider" means a person who provides residential care for children for 24 hours a day, including:

- (1) a child-care institution, as defined by Section 42.002, Human Resources Code;
- (2) a child-placing agency, as defined by Section 42.002, Human Resources Code;
- (3) a foster group home or foster family home, as defined by Section 42.002, Human Resources Code; and
- (4) an agency group home or agency home, as defined by Section 42.002, Human Resources Code, other than an agency group home, agency home, or a foster home verified or certified by the department.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 92, eff. Sept. 1, 1997.

264.1061. Foster Parent Performance

The department shall monitor the performance of a foster parent who has been verified by the department in the departments capacity as a child-placing agency. The method under which performance is monitored

must include the use of objective criteria by which the foster parents 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 parents services.

Added by Acts 1997, 75th Leg., ch. 1022, 92, eff. Sept. 1, 1997.

264.107. Placement of Children

(a) The department shall use a system for the placement of children in contract residential care, including foster care, that conforms to the levels of care adopted and maintained by the Health and Human Services Commission.

(b) The department shall use the standard application for the placement of children in contract residential care as adopted and maintained by the Health and Human Services Commission.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.1075. Use of Assessment Services

Before placing a child in substitute care, the department shall use assessment services provided by a child-care facility or child-placing agency in accordance with Section 42.0425, Human Resources Code, to determine the appropriate substitute care for the child.

Added by Acts 1997, 75th Leg., ch. 1022, 93, eff. Sept. 1, 1997.

264.108. Race or Ethnicity

(a) The department may not make a foster care placement decision on the presumption that placing a child in a family of the same race or ethnicity as the race or ethnicity of the child is in the best interest of the child.

(b) Unless an independent psychological evaluation specific to a child indicates that placement or continued living with a family of a particular race or ethnicity would be detrimental to the child, the department may not:

(1) deny, delay, or prohibit placement of a child in foster care because the department is attempting to locate a family of a particular race or ethnicity; or

(2) remove a child from foster care with a family that is of a race or ethnicity different from that of the child.

(c) The department may not remove a child from foster care with a family that is of a race or ethnicity different from that of the child for the sole reason that continued foster care with that family may:

(1) strengthen the emotional ties between the child and the family; or

(2) increase the potential of the familys desire to adopt the child because of the amount of time the child and the family are together.

(d) This section does not prevent or limit the departments recruitment of minority families as foster care families, but the recruitment of minority families may not be a reason to delay placement of a child in foster care with an available family of a race or ethnicity different from that of the child.

(e) An employee who violates this section is subject to immediate dismissal.

(f) The department by rule shall define what constitutes a delay under Subsections (b) and (d).

(g) A district court, on the application for an injunction or the filing of a petition complaining of a violation of this section by any person residing in the county in which the court has jurisdiction, shall enforce this section by issuing appropriate orders. An action for an injunction is in addition to any other action, proceeding, or remedy authorized by law. An applicant or petitioner who is granted an injunction or given other appropriate relief under this section is entitled to the costs of the suit, including reasonable attorneys fees.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 879, 2, eff. June 16, 1995.

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, 117, eff. Sept. 1, 1995.

264.110. Adoptive Parent Registry

(a) The department shall establish a registry of persons who are willing to accept foster care placement of a child in the care of the department. The child may be placed temporarily with a person registered under this section pending termination of the parent-child relationship.

(b) A person registered under this section must satisfy requirements adopted by rule by the department.

(c) The department shall maintain a list of persons registered under this section and shall make a reasonable effort to place a child with the first available qualified person on the list if a qualified extended family member is not available for the child.

(d) Before a child may be placed with a person under this section, the person must sign a written statement in which the person agrees to the immediate removal of the child by the department under circumstances determined by the department.

(e) A person registered under this section is not entitled to compensation during the time the child is placed in the persons home but may receive support services provided for the child by the department.

(f) A person registered under this section has the right to be considered first for the adoption of a child placed in the persons home if the parent-child relationship is terminated with regard to the child.

(g) The department may refuse to place a child with a person registered under this section only for a reason permitted under criteria adopted by department rule.

(h) The department shall make the public aware of the existence and benefits of the adoptive parent registry through appropriate existing department communication methods.

Added by Acts 1995, 74th Leg., ch. 943, 8, eff. Sept. 1, 1995.

Renumbered from V.T.C.A., Family Code 264.109 by Acts 1997, 75th Leg., ch. 165, 31.01(30), eff. Sept. 1, 1997.

264.111. Adoption and Substitute Information

(a) The department shall maintain in the departments central database information concerning children placed in the departments custody, including:

(1) for each formal adoption of a child in this state:

(A) the length of time between the date of the permanency plan decision of adoption and the date of the actual placement of the child with an adoptive family;

(B) the length of time between the date of the placement of the child for adoption and the date a final order of adoption was rendered;

(C) if the child returned to the departments custody after the date a final order of adoption was rendered for the child, the time between the date the final adoption order was rendered and the date the child returned to the departments custody; and

(D) for the adoptive family of a child under Paragraph (C), whether the family used postadoption program services before the date the child returned to the departments custody; and

(2) for each placement of a child in substitute care:

(A) the level of care the child was determined to require;

(B) whether the child was placed in an appropriate setting based on the level of care determined for the child;

(C) the number of moves for the child in substitute care and the reasons for moving the child;

(D) the length of stay in substitute care for the child from the date of initial placement to the date of approval of a permanency plan for the child;

(E) the length of time between the date of approval of a permanency plan for the child and the date of achieving the plan;

(F) whether the child's permanency plan was long-term substitute care;

(G) whether the child's achieved permanency plan was placement with an appropriate relative or another person, other than a foster parent, having standing; and

(H) whether the child was adopted by the child's foster parents.

(b) In addition to the information required in Subsection (a), the department shall compile information on:

(1) the number of families that used postadoption program services to assist in maintaining adoptive placements;

(2) the number of children returned to the department's custody after placement with an adoptive family but before a final adoption order was rendered;

(3) the number of children returned to the department's custody after the date a final order of adoption was rendered for the child;

(4) the number of adoptive families who used postadoption program services before the date a child placed with the family returned to the department's custody;

(5) the percentage of children who were placed in an appropriate setting based on the level of care determined for the child;

(6) the percentage of children placed in a department foster home;

(7) the percentage of children placed in a private child-placing agency;

(8) the number of children whose permanency plan was long-term substitute care;

(9) the number of children whose achieved permanency plan was placement with an appropriate relative or another person, other than a foster parent, having standing;

(10) the number of children adopted by the child's foster parents; and

(11) the number of children whose achieved permanency plan was removal of the disabilities of minority.

(c) The department shall make the information maintained under this section, other than information that is required by law to be confidential, available to the public by computer.

Added by Acts 1997, 75th Leg., ch. 600, 18, eff. Sept. 1, 1997.

264.112. Report on Children in Substitute Care

(a) The department shall report the status for children in substitute care to the Board of Protective and Regulatory Services 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, 18, eff. Sept. 1, 1997.

SUBCHAPTER C. CHILD AND FAMILY SERVICES

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.

(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, 1, eff. April 20, 1995.

Amended by Acts 1999, 76th Leg., ch. 1150, 28, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, 49, eff. Sept. 1, 1999.

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, 1, eff. April 20, 1995.

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 abused or neglected child's household to participate in the services the department provides or purchases for alleviating the effects of the abuse or neglect and to 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 community service as a sanction for contempt.

(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, 1, eff. April 20, 1995.

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.

(b) A swift adoption team shall consist of department personnel who shall operate under policies adopted by rule by the department. 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) The department shall, using a system of measurement developed by the department, report to the legislature on the success of swift adoption teams in expediting the administrative procedures and the length of time in placing children for adoption. The report shall include recommendations by the department concerning legislation that would enable the department to further improve adoption placements. The department shall report under this section on or before December 1 of each even-numbered year.

Added by Acts 1995, 74th Leg., ch. 943, 9, eff. Sept. 1, 1995.

264.206. Search for Adoptive Parents

(a) The department shall begin its efforts to locate qualified persons to adopt a child, including persons registered with the adoptive parent registry under Subchapter B, at the time the department's permanency plan for the child becomes the termination of the parent-child relationship and adoption of the child.

(b) The department shall report to the court in which the department petitions for termination of the parent-child relationship on the child's adoptability and the department's search for prospective adoptive parents for the child, including information relating to the department's efforts to work with licensed child-placing agencies.

Added by Acts 1997, 75th Leg., ch. 600, 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 94, eff. Sept. 1, 1997.

264.207. Department Planning and Accountability

(a) The department shall adopt policies that provide for the improvement of the department's services for children and families, including policies that provide for conducting a home study within four months after the date an applicant is approved for an adoption and documenting the results of the home study within 30 days after the date the study is completed. The policies adopted under this section must:

(1) be designed to increase the accountability of the department to individuals who receive services and to the public; and

(2) assure consistency of services provided by the department in the different regions of the state.

(b) To accomplish the goals stated in Subsection (a), the department shall:

(1) establish time frames for the initial screening of families seeking to adopt children;

(2) provide for the evaluation of the effectiveness of the departments management-level employees in expeditiously making permanent placements for children;

(3) establish, as feasible, comprehensive assessment services in various locations in the state to determine the needs of children and families served by the department;

(4) emphasize and centralize the monitoring and promoting of the permanent placement of children receiving department services;

(5) establish goals and performance measures in the permanent placement of children;

(6) seek private licensed child-placing agencies to place a child in the departments managing conservatorship who has been available for permanent placement for more than 90 days;

(7) provide information to private licensed child-placing agencies concerning children under Subdivision (6);

(8) provide incentives for a private licensed child-placing agency that places a child, as defined by Section 162.301, under Subdivision (6);

(9) encourage foster parents to be approved by the department as both foster parents and adoptive parents;

(10) address failures by the departments service regions in making permanent placements for children in a reasonable time; and

(11) require the departments service regions to participate in the Texas Adoption Resources Exchange.

Added by Acts 1997, 75th Leg., ch. 600, 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, 94, eff. Sept. 1, 1997.

264.208. Location of Parents

(a) The department shall create a division staffed by personnel trained in locating parents and relatives of children throughout the state.

(b) The department shall use outside contractors and volunteer resources to the extent feasible to perform its responsibilities under this section.

Added by Acts 1999, 76th Leg., ch. 228, 3, eff. Sept. 1, 1999.

SUBCHAPTER D. SERVICES TO AT-RISK YOUTH

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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 262, 58, eff. Jan. 1, 1996.

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 court under Section 264.304;
- (2) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59;
- (3) a law enforcement officer or agency under Section 52.03; or

(4) a justice or municipal court under Section 54.022.

(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, 58, eff. Jan. 1, 1996.

Amended by Acts 1997, 75th Leg., ch. 1086, 30, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, 31, eff. Sept. 1, 1997.

264.303. Commencement of Civil Action for Determination of At-Risk Children

(a) The department may file a civil action to request any district court or county court, other than a juvenile court, to determine that a child is an at-risk child. A person with whom the department contracts to provide services under Section 264.302 may file an action under this section if the department has approved the filing.

(b) Notice of the action must be provided to:

- (1) the child;
- (2) the parent, managing conservator, or guardian of the child; and
- (3) any other member of the child's household who may be affected by an order of the court if the court finds that the child is an at-risk child.

(c) A person served with notice of the action may, but is not required, to file a written answer. Any answer must be filed before the hearing on the action begins.

Added by Acts 1995, 74th Leg., ch. 262, 58, eff. Jan. 1, 1996.

264.304. Hearing; Determination of At-Risk Child

(a) Unless a later date is requested by the department, the court shall set a date and time for the hearing not later than 30 days after the date the action is filed.

(b) The court is the trier of fact at the hearing.

(c) The court shall determine that the child is an at-risk child if the court finds that the child has engaged in the following conduct:

(1) conduct, other than a traffic offense and except as provided by Subsection (d), that violates:

(A) the penal laws of this state; or

(B) the penal ordinances of any political subdivision of this state;

(2) the unexcused voluntary absence of the child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school without the consent of the child's parent, managing conservator, or guardian;

(3) the voluntary absence of the child from the child's home without the consent of the child's parent, managing conservator, or guardian for a substantial length of time or without intent to return;

(4) conduct that violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or second offense) or driving while under the influence of any narcotic drug or of any other drug to a degree that renders the child incapable of safely driving a vehicle (first or second offense); or

(5) conduct that evidences a clear and substantial intent to engage in any behavior described by Subdivisions (1)B(4).

(d) The court may not determine that a child is an at-risk child if the court finds that the child engaged in conduct violating the penal laws of this state of the grade of felony other than a state jail felony when the child was 10 years of age or older.

Added by Acts 1995, 74th Leg., ch. 262, 58, eff. Jan. 1, 1996.

264.305. Court Order for Services

(a) Except as provided by Subsection (b), if the court finds that the child is an at-risk child under Section 264.304, the court may order the child, the child's parent, managing conservator, or guardian or any other member of the child's household to participate in services provided by the department under Section 264.302 and contained in a plan approved by the court.

(b) The court may order an at-risk child to participate in services involving emergency short-term residential care only if the court finds that the child engaged in conduct described by Section 264.304(c)(1), (2), (3), or (4).

(c) An order rendered by a court under this section expires not later than six months after the date the order was rendered.

Added by Acts 1995, 74th Leg., ch. 262, 58, eff. Jan. 1, 1996.

264.306. Sanctions

(a) A child who violates a court order under Section 264.305 by failing to participate in services provided by the department engages in conduct indicating a need for supervision and the department shall refer the child to an appropriate juvenile authority for proceedings under Title 3 for that conduct.

(b) A parent, managing conservator, guardian, or other member of the child's household who violates a court order under Section 264.305 by failing to participate in services provided by the department is subject to contempt of court. The court may under its contempt powers impose a community service requirement.

Added by Acts 1995, 74th Leg., ch. 262, 58, eff. Jan. 1, 1996.

SUBCHAPTER E. CHILDRENS ADVOCACY CENTERS

264.401. Definition

In this subchapter, "center" means a children's advocacy center.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

264.402. Establishment of Children's Advocacy Center

(a) On the execution of a memorandum of understanding under Section 264.403, a children's advocacy center may be established by the participating entities.

(b) A center may be established to serve two or more contiguous counties.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

264.403. Interagency Memorandum of Understanding

(a) Before a center may be established under Section 264.402, a memorandum of understanding regarding participation in operation of the center must be executed among:

- (1) the division of the department responsible for child abuse investigations;
- (2) representatives of county and municipal law enforcement agencies that investigate child abuse in the area to be served by the center;
- (3) the county or district attorney who routinely prosecutes child abuse 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 entity to cooperate in:

- (1) developing a cooperative, team approach to investigating child 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) A memorandum of understanding executed under this section may include the agreement of one or more participating entities to provide office space and administrative services necessary for the centers operation.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

264.404. Board; Administration of Center

(a) The executive officer or board of each participating entity executing a memorandum of understanding that establishes a center under this subchapter shall appoint a member to serve on the governing board of the center.

(b) A governing board member serves at the pleasure of the appointing executive officer or board.

(c) Service on a centers board by a public officer or employee is an additional duty of the office or employment.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

264.405. Duties

A center shall:

(1) assess victims of child abuse and their families to determine their need for services relating to the investigation of child abuse;

(2) provide services determined to be needed under Subdivision (1);

(3) provide a facility at which a multidisciplinary team appointed under Section 264.406 can meet to facilitate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems; and

(4) coordinate the activities of governmental entities relating to child abuse investigations and delivery of services to child abuse victims and their families.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

264.406. Multidisciplinary Team

(a) A centers board shall appoint a multidisciplinary team to work within the center to review new and pending child abuse cases for the purpose of coordinating the activities of entities involved in investigation, prosecution, and victim services.

(b) A multidisciplinary team may review a child abuse case in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare or care.

(c) A multidisciplinary team shall consist of persons who are involved in the investigation or prosecution of child abuse cases or the delivery of services to child abuse victims and their families.

(d) A multidisciplinary team shall meet at the call of the board. The board shall call a meeting of the multidisciplinary team if:

- (1) a new child abuse case is received; or
- (2) a pending child abuse case requires attention.

(e) At each meeting, the multidisciplinary team shall discuss each active case and the actions of the entities involved in investigation, prosecution, and victim services.

(f) When acting in the members official capacity, a multidisciplinary team member is authorized to receive information made confidential by Section 40.005, Human Resources Code, or Section 261.201 or 264.408.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 575, 32, eff. Sept. 1, 1997.

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 persons 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 persons actions constitute gross negligence.

Added by Acts 1995, 74th Leg., ch. 255, 1, eff. Sept. 1, 1995.

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 to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

(b) Information related to the investigation of a report of abuse or neglect under Chapter 261 and 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.

(d) A videotaped interview of a child made at a center is the property of the prosecuting attorney involved in the criminal prosecution of the case involving the child. If no criminal prosecution occurs, the videotaped interview is the property of the attorney involved in representing the department in a civil action alleging child abuse or neglect. If the matter involving the child is not prosecuted, the videotape is the property of the department if the matter is an investigation by the department of abuse or neglect. If the department is not investigating or has not investigated the matter, the videotape is the property of the

agency that referred the matter to the center. If the center employs a custodian of records for videotaped interviews of children, the center is responsible for the custody of the videotape. A videotaped interview may be shared with other agencies under a written agreement.

(e) The department shall be allowed access to a centers videotaped interviews of children.

Added by Acts 1997, 75th Leg., ch. 575, 33, eff. Sept. 1, 1997.

264.409. Administrative Contracts

(a) The department or the office of the attorney general may contract with a statewide organization of individuals or groups of individuals who have expertise in the establishment and operation of childrens advocacy center programs. The statewide organization shall provide training, technical assistance, and evaluation services for local childrens advocacy center programs.

(b) If the office of the attorney general enters into a contract under this section, the contract must provide that the statewide organization may not spend annually for administrative purposes more than 12 percent of the annual amount appropriated to the office of the attorney general for purposes of this section.

Added by Acts 1997, 75th Leg., ch. 575, 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 347, 1, eff. Sept. 1, 1999.

264.410. Contracts With Childrens Advocacy Centers

(a) The statewide organization with which the department or the office of the attorney general contracts under Section 264.409 shall contract for services with eligible centers to enhance the existing services 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 attorney general enters into a contract with a statewide organization under Section 264.409, the attorney general by rule shall adopt standards for eligible local centers. The statewide organization shall assist the attorney general in developing the standards.

Added by Acts 1997, 75th Leg., ch. 575, 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 347, 2, eff. Sept. 1, 1999.

264.411. Eligibility for Contracts

(a) A public entity or 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) operates under the authority of a governing board as provided by Section 264.404;

(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;

(4) holds regularly 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 office of the attorney general when requested;

(7) has an in-house volunteer program;

(8) employs an executive director who is answerable to the board of directors of the entity and who is not the exclusive salaried employee of any public agency partner; and

(9) operates under a working protocol that includes a statement of:

(A) the centers mission;

(B) each agencies role and commitment to the center;

(C) the type of cases to be handled by the center; and

(D) procedure for case reviews.

(b) The statewide organization may waive the requirements specified in Subsection (a) if it determines that the waiver will not adversely affect the centers ability to carry out its duties under Section 264.405. Any waiver that is granted must be identified in the written contract with the center.

Added by Acts 1997, 75th Leg., ch. 575, 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 347, 3, eff. Sept. 1, 1999.

SUBCHAPTER F. CHILD FATALITY REVIEW AND INVESTIGATION

264.501. Definitions

In this subchapter:

(1) "Autopsy" and "inquest" have the meanings assigned by Article 49.01, Code of Criminal Procedure.

(2) "Bureau of vital statistics" means the bureau of vital statistics of the Texas Department of Health.

(3) "Child" means a person younger than 18 years of age.

(4) "Committee" means the child fatality review team committee.

(5) "Council" means the Childrens Trust Fund of Texas Council.

(6) "Department" means the Department of Protective and Regulatory Services.

(7) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including dental and mental health evaluation or treatment.

(8) "Meeting" means an in-person meeting or a meeting held by telephone or other electronic medium.

(9) "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).

(10) "Review" means a reexamination of information regarding a deceased child from relevant agencies, professionals, and health care providers.

(11) "Review team" means a child fatality review team established under this subchapter.

(12) "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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

264.502. Committee

(a) The child fatality review team committee is composed of:

(1) a person appointed by and representing the state registrar for the bureau of vital statistics;

(2) a person appointed by and representing the director of protective services for families and children of the department;

(3) a person appointed by and representing the director of the bureau of epidemiology of the Texas Department of Health;

(4) a person appointed by and representing the executive director of the council; and

(5) individuals selected under Subsection (b).

(b) The members of the committee who serve under Subsections (a)(1) through (4) 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; and
- (14) a chief juvenile probation officer.

(c) Members of the committee selected under Subsection (b) serve two-year terms that expire on February 1 of each even-numbered 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.

(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 members travel expenses as provided in the General Appropriations Act. Reimbursement under this subsection for a person serving on the committee under Subsection (a)(1) or (3) shall be paid from funds appropriated to the Texas Department of Health. Reimbursement for other persons serving on the committee shall be paid equally from funds appropriated to the department and funds appropriated to the council.

Added by Acts 1995, 74th Leg., ch. 255, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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, the council, and the Texas Department of Health shall perform the duties specified by this section.
- (c) The department 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; and
 - (4) develop and implement procedures necessary for the operation of the committee.
- (d) The council shall 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. The committee shall enlist the support and assistance of civic, philanthropic, and public service organizations in the performance of the duties imposed under this subsection.
- (e) The Texas Department of Health shall:
- (1) collect data under this subchapter and coordinate the collection of data under this subchapter with other data collection activities; and
 - (2) perform annual statistical studies of the incidence and causes of child fatalities using the data collected under this subchapter.
- (f) The committee shall issue annual reports on the committees activities, including findings and recommendations relating to each purpose and duty of the committee described by this section. Not later than December 1 of each even-numbered year, the committee shall publish the report and submit a copy of the report to the governor, lieutenant governor, and speaker of the house of representatives.

Added by Acts 1995, 74th Leg., ch. 255, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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.

(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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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 review team for a county with a population of less than 50,000 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 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; and
- (13) a chief juvenile probation officer.

(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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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; and
- (4) submit to the bureau of vital statistics 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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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 bureau of vital statistics 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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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.

(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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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 examiners office or that is not part of a medical examiners 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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

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 Texas Department of Health under Chapter 81, Health and Safety Code.

(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.

(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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, 95, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1301, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 785, 3, eff. Sept. 1, 1999.

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, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 878, 1, eff. Sept. 1, 1995.

SUBCHAPTER G. COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

264.601. Definitions

In this subchapter:

(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 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.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.602. Contracts With Advocate Programs

(a) The statewide organization with which the attorney general contracts under Section 264.603 shall contract for services with eligible volunteer advocate programs to expand the existing services of the programs.

(b) The contract under this section may not result in reducing the financial support a volunteer advocate program receives from another source.

(c) The attorney general 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 attorney general may not provide more than 50 percent of the volunteer advocate programs funding.

(d) The attorney general by rule shall adopt standards for a local volunteer advocate program. The statewide organization shall assist the attorney general in developing the standards.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 118, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1294, 7, eff. Sept. 1, 1997.

264.603. Administrative Contracts

(a) The attorney general shall contract with one statewide organization 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 require measurable goals and objectives for expanding local volunteer child advocate programs to areas of the state in which those programs do not exist.

(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 attorney general contracts under this section.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 119, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 600, 20, eff. Sept. 1, 1997.

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 two years;

(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 attorney general 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 120, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1294, 8, eff. Sept. 1, 1997.

264.605. Contract Form

A person shall apply for a contract under Section 264.602 on a form provided by the attorney general.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.606. Criteria for Award of Contracts

The statewide organization with which the attorney general contracts under Section 264.603 shall consider the following in awarding a contract under Section 264.602:

- (1) the volunteer advocate programs 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 121, eff. Sept. 1, 1995.

264.607. Contract Requirements

(a) The attorney general 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 attorney general;
- (2) cooperate with inspections and audits that the attorney general 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.
- (b) The statewide organization with which the attorney general contracts under Section 264.603 may require that a contract under Section 264.602 require the volunteer advocate program to use forms provided by the attorney general.
- (c) The attorney general shall develop forms in consultation with a statewide organization of 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, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 122, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1294, 9, eff. Sept. 1, 1997.

264.608. Report to the Legislature

- (a) Before each regular session of the legislature, the attorney general shall publish a report that:
- (1) summarizes reports from volunteer advocate programs under contract with the attorney general;
 - (2) analyzes the effectiveness of the contracts made by the attorney general 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 attorney general shall submit copies of the report to the governor, lieutenant governor, speaker of the house of representatives, the Legislative Budget Board, and members of the legislature.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.609. Rule Making Authority

The attorney general may adopt rules necessary to implement this chapter.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995.

264.610. Confidentiality

The attorney general 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, 1, eff. April 20, 1995.

264.611. Consultations

In implementing this chapter, the attorney general 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, 1, eff. April 20, 1995.

264.612. Funding

(a) The attorney general 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 attorney general requires priority and preferential consideration for appropriation.

(c) Repealed by Acts 1995, 74th Leg., ch. 751, 128, eff. Sept. 1, 1995.

Added by Acts 1995, 74th Leg., ch. 20, 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, 128, eff. Sept. 1, 1995.

SUBCHAPTER H. CHILD ABUSE PROGRAM EVALUATION

264.701. Child Abuse Program Evaluation Committee

(a) The Child Abuse Program Evaluation Committee is established within the Department of Protective and Regulatory Services.

(b) The committee is appointed by the Board of Protective and Regulatory Services and is composed of the following 15 members:

- (1) an officer or employee of the Texas Education Agency;
- (2) an officer or employee of the Department of Protective and Regulatory Services;
- (3) an officer or employee of the Texas Juvenile Probation Commission;
- (4) an officer or employee of the Texas Department of Mental Health and Mental Retardation;
- (5) an officer or employee of the Childrens Trust Fund of Texas Council;
- (6) an officer or employee of the Health and Human Services Commission;

(7) three members of the public who have knowledge of and experience in the area of delivery of services relating to child abuse and neglect;

(8) three members of the public who have knowledge of and experience in the area of evaluation of programs relating to the prevention and treatment of child abuse and neglect; and

(9) three members of the public who are or have been recipients of services relating to the prevention or treatment of child abuse or neglect.

(c) In appointing members to the committee under Subsection (b)(9), the board shall consider appointing:

(1) an adult who as a child was a recipient of services relating to the prevention or treatment of child abuse or neglect; and

(2) a custodial and a noncustodial parent of a child who is or was a recipient of services relating to the prevention or treatment of child abuse or neglect.

(d) A committee member appointed to represent a state agency or entity serves at the pleasure of the board or until termination of the persons employment or membership with the agency or entity. The public members serve staggered six-year terms, with the terms of three public members expiring on September 1 of each even-numbered year.

(e) A member of the committee serves without compensation. A public member is entitled to reimbursement for travel expenses and per diem as provided by the General Appropriations Act.

(f) The committee shall elect from its members a presiding officer and any other officers considered necessary.

(g) Appointments to the committee shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of an appointee.

(h) The committee shall:

(1) develop and adopt policies and procedures governing the system each state agency uses to evaluate the effectiveness of programs to prevent or treat child abuse or neglect with which the agency contracts;

(2) develop and adopt standard definitions of "child abuse treatment" and "child abuse prevention" to be used in implementing and administering the evaluation system created under this subchapter;

(3) develop and adopt standard models and guidelines for prevention and treatment of child abuse to be used in implementing and administering the evaluation system created under this subchapter;

(4) develop and adopt, in cooperation with each affected state agency, a schedule for each agency's adoption and implementation of the committee's evaluation system that considers each agency's budget cycle;

(5) develop and adopt a standard report form and a reporting schedule for the affected agencies;

(6) develop and adopt objective criteria by which the performance of child abuse programs may be measured after reports under this subchapter are submitted and evaluated; and

(7) report annually to the Board of Protective and Regulatory Services, governor, lieutenant governor, and speaker of the house of representatives on the results of the committee's evaluation process.

(i) In adopting an evaluation system under this subchapter, the committee shall allow the affected agencies as much latitude as possible in:

(1) the methods used to collect the required data; and

(2) the timetable for full implementation of the system, allowing for gradual implementation of the system according to classes of program providers.

(j) Each agency that contracts with a public or private entity for services relating to a program for the prevention or treatment of child abuse or neglect shall adopt and implement the committee's evaluation system and shall report to the committee as required by this subchapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 14, 5.02(a), eff. Nov. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, 8.128, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Government Code 772.007 and amended by Acts 1995, 74th Leg., ch. 943, 12, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, 6.10, eff. Sept. 1, 1997.

SUBCHAPTER I. COMMUNITIES IN SCHOOLS PROGRAM

264.751. Definitions

In this subchapter:

(1) "Agency" means the Texas Education Agency.

(2) "Communities In Schools program" means an exemplary youth dropout prevention program.

(3) "Delinquent conduct" has the meaning assigned by Section 51.03.

(4) "Student at risk of dropping out of school" has the meaning assigned by Section 29.081, Education Code, or means a student who is eligible for a free or reduced lunch or is in family conflict or crisis.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.001 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.001 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, 6.69, eff. Sept. 1, 1997. Redesignated from V.T.C.A., Labor Code 305.001 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.752. Statewide Operation of Program

It is the intent of the legislature that the Communities In Schools program operate throughout this state. It is also the intent of the legislature that programs established under Chapter 305, Labor Code, and its predecessor statute, the Texas Unemployment Compensation Act (Article 5221bB9d, Vernon's Texas Civil Statutes), and programs established under this subchapter shall remain eligible to participate in the Communities In Schools program if funds are available and if their performance meets the criteria established by the department for renewal of their contracts.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.002 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.002 by Acts 1995, 74th Leg., ch. 655, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.002 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.753. State Director

The executive director of the department shall designate a state director for the Communities In Schools program.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.011 and amended by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.011 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.011 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.754. Duties of State Director

The state director shall:

- (1) coordinate the efforts of the Communities In Schools program with other social service organizations and agencies and with public school personnel to provide services to students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis;
- (2) set standards for the Communities In Schools program and establish state performance goals, objectives, and measures for the program;
- (3) obtain information to determine accomplishment of state performance goals, objectives, and measures;
- (4) promote and market the program in communities in which the program is not established;
- (5) help communities that want to participate in the program establish a local funding base; and
- (6) provide training and technical assistance for participating communities and programs.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.012 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.012 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.012 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.755. Agency Cooperation; Memorandum of Understanding

(a) The agency, the department, and Communities In Schools, Inc. shall work together to maximize the effectiveness of the Communities In Schools program.

(b) The agency and the department shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of the agency and of the department under this subchapter. The memorandum must address:

(1) the role of the department in encouraging local business to participate in local Communities In Schools programs;

(2) the role of the agency in obtaining information from participating school districts;

(3) the use of federal or state funds available to the agency or the department for programs of this nature; and

(4) other areas identified by the agency and the department that require clarification.

(c) The agency and the department shall adopt rules to implement the memorandum and shall update the memorandum and rules annually.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.013 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.013 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.013 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.756. Funding; Expansion of Participation

(a) The department shall develop and implement an equitable formula for the funding of local Communities In Schools programs. The formula may provide for the reduction of funds annually contributed by the state to a local program by an amount not more than 50 percent of the amount contributed by the state for the first year of the program. The formula must consider the financial resources of individual communities and school districts. Savings accomplished through the implementation of the formula may be used to extend services to counties and municipalities currently not served by a local program or to extend services to counties and municipalities currently served by an existing local program.

(b) Each local Communities In Schools program shall develop a funding plan which ensures that the level of services is maintained if state funding is reduced.

(c) A local Communities In Schools program may accept federal funds, state funds, private contributions, grants, and public and school district funds to support a campus participating in the program.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, 9.40(a), eff. Sept. 1, 1995. Renumbered from V.T.C.A., Labor Code 216.021 and amended by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, 9.40(a), eff. Sept. 1, 1995. Renumbered from V.T.C.A., Labor Code 216.021 and amended by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.021 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.757. Participation in Program

An elementary or secondary school designated under Section 264.756 shall participate in a local Communities In Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the agency.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.022 and amended by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.022 and amended Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

264.758. Donations to Program

(a) The department may accept a donation of services or money or other property that the department determines furthers the lawful objectives of the department in connection with the Communities In Schools program.

(b) Each donation, with the name of the donor and the purpose of the donation, must be reported in the public records of the department.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.031 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Labor Code 216.031 by Acts 1995, 74th Leg., ch. 655, 11.05, eff. Sept. 1, 1995. Redesignated from V.T.C.A., Labor Code 305.031 and amended by Acts 1999, 76th Leg., ch. 489, 3, eff. Sept. 1, 1999.

CHAPTER 265. PREVENTION AND EARLY INTERVENTION SERVICES

265.001. Definitions

In this chapter:

- (1) "Department" means the Department of Protective and Regulatory 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, 2, eff. Sept. 1, 1999.

265.002. Prevention and Early Intervention Services Division

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.

Added by Acts 1999, 76th Leg., ch. 489, 2, eff. Sept. 1, 1999.

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, 2, eff. Sept. 1, 1999.