

To: David Slayton, Executive Director, Texas Judicial Council

From: Tina Amberboy, Executive Director of Children's Commission

Re: Legislative Considerations for the 84th Session

David, the following is a list of issues that I anticipate may involve the Children's Commission serving as a resource witness via oral or written testimony:

1. **Determining indigence and timing of appointment of legal representation for parents in child protection cases.**
 - a. **Family Code Sections 107.013 and 263.201 would be amended to establish guidelines for determining indigence and clarify that parents are entitled to a court appointed attorney when they are indigent and appear in opposition to the state's suit. New Section 107.0141 adds the option for courts to appoint attorneys for a limited period to assist with locating the parents, establishing indigence, and preparing for the adversary hearing.**
 - i. **Section 107.013 would be amended to reorder the subsections for consistency and to clarify that when an indigent parent appears in opposition to the state's petition for conservatorship of their child and/or to terminate parental rights and seeks a court appointed attorney, the parent must file an affidavit of indigence, and the court may hear additional evidence beyond the affidavit of indigence to determine whether the parent qualifies for a court appointed attorney. The court is required to appoint an attorney to represent the parent, if the court determines the parent is indigent. Also, if both parents of the child are entitled to the appointment of an attorney and the court finds that the interests of the parents are not in conflict and there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties, the court may appoint one attorney to represent the interests of both parents.**
 - ii. **Section 107.0141 would be added to allow a court to appoint an attorney to represent a parent for a limited duration starting from the date the court issues the temporary restraining order or order of attachment of a child under Chapter 262 until the court makes the determination of indigence or commences the full adversary hearing under Section 262.201, whichever occurs first. It also mandates that attorneys appointed under this section have the powers and duties of an attorney as set forth in Section 107.131. If the Department of Family and Protective Services (the "Department") is unable to locate the parent, the attorney is required to conduct an investigation regarding the petitioner's diligence in locating and serving the parent including interviewing any party or person who may have information relating to the location of the parent. If and when the attorney locates the**

parent, the attorney must inform the parent of their right to be represented by an attorney, if the parent is indigent and opposed to the state's suit. The attorney can also assist the parent with establishing a claim of indigence and in preparing for the full adversary hearing. It also authorizes the court to appoint the attorney to continue the attorney's representation. If the court determines that the parent is not indigent, the court must dismiss the attorney from the case. If the attorney cannot locate the parent, the attorney must submit a written summary of the attorney's efforts to identify and locate the parent and the court must then dismiss the attorney from the case.

- iii. Section 262.201 would be amended to instruct any judge presiding over the Adversary Hearing to determine indigence and eligibility of the parent to have court appointed counsel prior to the commencement of the adversary hearing if the parent appears in opposition and states he or she is indigent.

2. Child Protection Case Transfer Between Counties

- a. Texas Family Code Chapters 155 and 263 would be amended to place tighter controls on the process used when child protection cases transfer from one county to another to help ensure state mandated deadlines and party appointments are not missed.
 - i. Section 155.207 would be amended to require that the clerk of the court that is transferring a proceeding filed under Texas Family Code Subchapter E, transfer to the receiving clerk within ten (10) days the pleadings, any other documents specified by a party, certified copies of the minutes, a certified copy of each final order, and a certified copy of the transfer order signed by the transferring court.
 - ii. Section 262.203 would be amended to require that the court order transferring a case to another jurisdiction include the date of any future hearings which have been scheduled by the transferring court, any date of dismissal scheduled by the transferring court pursuant to Section 263.401, and the names and contact information of attorneys and guardians ad litem. Also, the receiving court may, in its discretion, retain any attorney or guardian ad litem appointed by the transferring court. If the receiving court determines that appointment of a substitute attorney and/or guardian is appropriate, the court must appoint the substitute attorney and/or guardian within ten days of receiving the order of transfer from transferring court or by the time of the first scheduled hearing in the receiving court, whichever occurs first.

3. Establishment of Office of Parent of Child Representation for legal representation in CPS cases.

- a. Texas Family Code Sections 107.019, 107.0191 and 107.020 would be added to provide for the creation and oversight of county or regional offices of child or parent representation in CPS cases.
 - i. Section 107.019 and 107.0191 would allow counties to create and to use public funds for county or regional office of parent or child representation to a child, an indigent parent or an alleged father in a suit seeking conservatorship of a

child or termination of parental rights, and would provide guidance for county oversight of said offices.

- ii. Section 107.020 would allow counties to use public funds to contract with a nonprofit entity, governmental entity or bar association to manage the assignment of and compensation under a managed assigned counsel program for the legal representation to a child, an indigent parent, or an alleged father a suit filed by a governmental entity seeking conservatorship of a child or termination of parental rights.**

The purpose of resource testimony or information provided by the Children's Commission is to assess a proposed issue's impact on judicial administration of child-protection cases and should not be viewed as an advisory issued by the Supreme Court of Texas or any other court. Resource papers and testimony are not rulings on specific cases or legal issues, but are solely intended to address the improvement of the law, the legal system, and the administration of justice.

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

**Supporting Texas Family Code Amendments Related to
Indigent Parents Involved in Child Protective Services Cases**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, Texas Counties are responsible for providing legal representation through the appointment of attorneys ad litem to represent parents and children in Child Protective Services cases; and

WHEREAS, in order for counties to possess the discretion to meet the demand for court appointed attorneys in a manner most beneficial to the county; and

WHEREAS, the Texas Family Code should be amended and Sections 107.019 and 107.0191 added in order to provide for the creation and oversight of county or regional offices of parent or child representation to provide legal representation and services to a child, an indigent parent or an alleged father in a suit seeking conservatorship of a child or termination of parental rights; and

WHEREAS, the Texas Family Code should be amended and Section 107.020 added in order to provide for the creation of county or regional managed assigned counsel programs to provide legal representation and services to a child, an indigent parent or an alleged father in a suit seeking conservatorship of a child or termination of parental rights; and

WHEREAS, the counties that create county or regional offices of parent or child representation or managed assigned counsel programs may use public funds to establish the county or regional offices of parent or child representation or managed assigned counsel programs and may do so by forming an office of representation that is either a governmental entity or a nonprofit corporation or bar association, as applicable, operating under a written agreement with a governmental entity, other than a judge or a court; and

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports the Supreme Court of Children's Commission request for these amendments to the Texas Family Code.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

Contact: Tina Amberboy
Executive Director, Children's Commission
512-463-9352

Sec. 107.019. OFFICES OF PARENT REPRESENTATION AND CHILD REPRESENTATION. (a) In this chapter:

(1) "Governmental entity" includes a county, a group of counties, a department of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) "Oversight board" means an oversight board established in accordance with Sec. 107.0191.

(4) "Office of parent representation and office of child representation" means an entity that:

(A) is either:

(i) a governmental entity; or

(ii) a nonprofit corporation operating under a written agreement with a governmental entity, other than an individual judge or court; and

(B) uses public funds to provide legal representation and services to a child, an indigent parent or an alleged father, as applicable, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child. Nothing herein shall in any way limit or prevent a nonprofit corporation from receiving and using funds obtained from other entities to provide legal representation and services as authorized by this section.

(b) The commissioners court of any county, on written approval of a judge of a statutory county court or district court having family law jurisdiction in the county, may create a department of the county or by contract may designate a nonprofit corporation to serve as an office of parent representation or office of child representation. The commissioners courts of two or more counties may enter into a written agreement to jointly create or designate and jointly fund a regional office of parent representation or office of child representation. In creating or designating an office of parent representation or an office of child representation under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if creating or designating a regional office of parent representation or office of child representation:

(1) the duties of the office of parent representation or the office of child representation;

(2) the types of cases to which the office of parent representation or the office of child representation may be appointed under this chapter and the courts in which an attorney employed by the office of parent representation or the office of child representation may be required to appear;

(3) if the office of parent representation or the office of child representation is a nonprofit corporation, the term during which the contract designating the office of parent representation or the office of child representation is effective and how that contract may be renewed on expiration of the term; and

(4) if an oversight board is established under Sec. 107.0191 for the office of parent representation or the office of child representation, the powers and duties that have been delegated to the oversight board.

(c) The applicable commissioners court or commissioners courts shall require a written plan for operation from a governmental entity serving as an office of parent representation or an office of child representation. The plan for operation of the office of parent representation or the office of child representation must include:

(1) a budget for the office of parent representation or the office of child representation, including salaries;

(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the office of parent representation or the office of child representation;

(4) provisions for training of personnel and attorneys employed by the office of parent representation or office of child representation;

(5) a description of anticipated overhead costs for the office of parent representation or the office of child representation;

(6) policies regarding the use of licensed investigators and expert witnesses by the office of parent representation or the office of child representation; and

(7) a policy to ensure that the chief of the office of parent representation or the office of child representation and other attorneys employed by the office of parent representation or the office of child representation do not provide representation to a child, a parent or an alleged father if doing so would create a conflict of interest that has not been waived by the client.

(d) Before contracting with a nonprofit corporation to serve as an office of parent representation or an office of child representation under subsection (b), the commissioners court or commissioners courts shall solicit proposals for the office of parent representation or the office of child representation.

(f) After considering each proposal for the office of parent representation or the office of child representation submitted by a nonprofit corporation under subsection (d), the commissioners court or

commissioners courts shall select a proposal that reasonably demonstrates that the office of parent representation or the office of child representation will provide adequate quality representation for children, parents and alleged fathers, as applicable, in the county or counties.

(g) The total cost of the proposal under Subsection (d) may not be the sole consideration in selecting a proposal.

(h) An office of parent representation or an office of child representation must be directed by a chief counsel who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of child welfare law.

(i) An office of parent representation or an office of child representation is entitled to receive funds for personnel costs and expenses incurred in operating as an office of parent representation or an office of child representation in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the office of parent representation or the office of child representation serves more than one county.

(j) An office of parent representation or an office of child representation may employ attorneys, licensed investigators, licensed social workers, and other personnel necessary to perform the duties of the office of parent representation or the office of child representation as specified by the commissioners court or commissioners courts under subsection (b) (1).

(k) Except as authorized by this section, the chief counsel and other attorneys employed by an office of parent representation or an office of child representation may not:

(1) engage in the private practice of child welfare law;

or

(2) accept anything of value not authorized by this chapter for services rendered under this section.

(l) An office of parent representation or an office of child representation may not accept an appointment under Section 107.018(f) if:

(1) a conflict of interest exists that has not been waived by the client;

(2) the office of parent representation or the office of child representation has insufficient resources to provide adequate representation for the child, the parent or the alleged father;

(3) the office of parent representation or the office of child representation is incapable of providing representation for the child, the parent or the alleged father, as applicable in accordance with the rules of professional conduct; or

(4) the office of parent representation or the office of child representation shows other good cause for not accepting the appointment.

(m) The judge may remove from a case a person who violates a provision of Subsection (k).

(n) An office of parent representation or an office of child representation may investigate the financial condition of any person the office of parent representation or the office of child representation is appointed to represent. The office of parent representation or the office of child representation shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this chapter.

(o) If it is necessary that an attorney who is not employed by an office of parent representation or an office of child representation be appointed, the attorney is entitled to the compensation provided by Section 107.021 of this code.

Sec. 107.0191. OVERSIGHT BOARD. (a) The commissioners court of a county or the commissioners courts of two or more counties may establish an oversight board for an office of parent representation or an office of child representation created or designated in accordance with this chapter.

(b) The commissioners court or courts that establish an oversight board under this section shall appoint members of the board. Members may include one or more of the following:

(1) an attorney with substantial experience in child welfare law;

(2) the judge of a trial court having family law jurisdiction in the county or counties for which the office of parent representation or the office of child representation was created;

(3) a county commissioner; and

(4) a county judge;

(c) The commissioners court or courts may delegate to the board any power or duty of the commissioners court to provide oversight of the office under Section 107.019, including:

- (1) recommending selection and removal of a chief of the office of parent representation or the office of child representation;
- (2) setting policy for the office; and
- (3) developing a budget proposal for the office.

(d) An oversight board established under this section may not gain access to privileged or confidential information.

Sec. 107.020. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this section:

(1) "Governmental entity" has the meaning assigned by Section 107.019.

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B) for the purpose of appointing counsel to provide legal representation and services to a child, an indigent parent or an alleged father, as applicable, in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child.

(b) The commissioners court of any county, on written approval of a judge of a statutory county court or district court having family law jurisdiction in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under this section, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this section. The plan of operation must include:

- (1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program's director;

(3) the maximum allowable caseload for each attorney appointed under the program;

(4) provisions for training personnel of the program and attorneys appointed under the program;

(5) a description of anticipated overhead costs for the program;

(6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

(7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and

(8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d) A program under this section must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this section must be directed by a person who:

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of child welfare law.

(e) The governmental entity, nonprofit corporation, or bar association operating the program may appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list described by Subsection (f). Each member of the committee:

(1) must meet the requirements described by Subsection (d);

(2) may not be employed as a prosecutor; and

(3) may not be included on or apply for inclusion on the public appointment list described by Subsection (f).

(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets any applicable requirements specified by the procedures for appointing counsel in the courts in which the counsel appointed by the program may be required to appear; and

(3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner specified by the courts in which the counsel appointed by the program may be required to appear.

(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i) A managed assigned counsel program may employ attorneys, licensed investigators, licensed social workers, and other personnel necessary to perform the duties of the program and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this section.

STATE OF TEXAS

RESOLUTION

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TEXAS JUDICIAL COUNCIL

**Supporting Texas Family Code Amendments Related to
Case Transfers in Child Protective Services Cases**

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, case transfers of Child Protective Services cases between counties is a critical matter with critical dates and deadlines that, if overlooked, can endanger the safety and well-being of children involved in CPS cases; and

WHEREAS, Texas Family Code Chapters 155 and 263 should be amended to place tighter controls on the process used when child protection cases transfer from one county to another to help ensure state mandated deadlines and party appointments are not missed; and

WHEREAS, Section 155.207 would be amended to require that the clerk of the court that is transferring a proceeding filed under Texas Family Code Subchapter E, transfer to the receiving clerk within ten (10) days the pleadings, any other documents specified by a party, certified copies of the minutes, a certified copy of each final order, and a certified copy of the transfer order signed by the transferring court; and

WHEREAS, Section 262.203 would be amended to require that the court order transferring a case to another jurisdiction include the date of any future hearings which have been scheduled by the transferring court, any date of dismissal scheduled by the transferring court and include the names and contact information of attorneys and guardians ad litem; and

WHEREAS, the receiving court may, in its discretion, retain any attorney or guardian ad litem appointed by the transferring court; and

WHEREAS, if the receiving court determines that appointment of a substitute attorney and/or guardian is appropriate, the court must appoint the substitute attorney and/or guardian within ten days of receiving the order of transfer from transferring court or by the time of the first scheduled hearing in the receiving court, whichever occurs first.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports the Supreme Court of Children's Commission request for these amendments to the Texas Family Code.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

Contact: Tina Amberboy
Executive Director, Children's Commission
512-463-9352

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING
THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 155. CONTINUING, EXCLUSIVE JURISDICTION; TRANSFER

SUBCHAPTER A. CONTINUING, EXCLUSIVE JURISDICTION

Sec. 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 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 adjudicate 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.19, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 821, Sec. 2.15, eff. June 14, 2001.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.20, eff. Sept. 1, 1999.

Sec. 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, Sec. 1, eff. April 20, 1995.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 8, eff. Sept. 1, 1997.

Sec. 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, Sec. 1, eff. April 20, 1995.

SUBCHAPTER B. IDENTIFICATION OF COURT OF CONTINUING, EXCLUSIVE JURISDICTION

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 44, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 178, Sec. 8, eff. Aug. 30, 1999.

Sec. 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, Sec. 1, eff. April 20, 1995.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 45, eff. Sept. 1, 1995.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 46, eff. Sept. 1, 1995.

SUBCHAPTER C. TRANSFER OF CONTINUING, EXCLUSIVE JURISDICTION

Sec. 155.201. MANDATORY TRANSFER. (a) On the filing of a motion showing that a suit for dissolution of the marriage of the child's parents has been filed in another court and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship shall, within the time required by Section 155.204, transfer the proceedings to the court in which the dissolution of the marriage is pending. The motion must comply with the requirements of Section 155.204(a).

(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, within the time required by Section 155.204, 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1135, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 14, eff. June 18, 2005.

Sec. 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, Sec. 1, eff. April 20, 1995.

Sec. 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, Sec. 1, eff. April 20, 1995.

Sec. 155.204. PROCEDURE FOR TRANSFER. (a) A motion to transfer under Section 155.201(a) may be filed at any time. The motion must contain a certification that all other parties,

including the attorney general, if applicable, have been informed of the filing of the motion.

(b) Except as provided by Subsection (a) or 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.

(c) 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, not later than the 21st day after the final date of the period allowed for the filing of a controverting affidavit, be transferred without a hearing to the proper court.

(d) 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.

(e) 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.

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

(g) If the court finds after the hearing on the motion to transfer that grounds for the transfer exist, the proceeding shall be transferred to the proper court not later than the 21st day after the date the hearing is concluded.

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

(i) If a transfer order has been signed 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 14, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 15, eff. June 18, 2005.

Sec. 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 or, if payments have previously been directed to the state disbursement unit, to the state disbursement unit.

(b) The transferring court's local registry 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 court's 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 court's local registry or to the state disbursement unit, as appropriate.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1023, Sec. 11, eff. Sept. 1, 2001.

Sec. 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 court's 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, Sec. 1, eff. April 20, 1995.

Sec. 155.207. TRANSFER OF COURT FILES. (a) Not later than ten working day after the signing 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 pleadings in the pending proceeding and any other document specifically requested by a party;

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

(3) a certified copy of each final order.

(b) The clerk of the transferring court shall keep a copy of the transferred pleadings and other requested documents. If the transferring court retains jurisdiction of another child who was the subject of the suit, the clerk shall send a copy of the pleadings and other requested documents to the court to which

the transfer is made and shall keep the original pleadings and other requested documents.

(c) On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the transferee court, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. In cases which have been filed under Subtitle E, the clerk shall also furnish the transferee court with a copy of the order of transfer signed by the transferring court.

(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, if appropriate, to the local registry of the transferee court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2001, 77th Leg., ch. 1023, Sec. 12, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 916 (H.B. 260), Sec. 16, eff. June 18, 2005.

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

Sec. 155.301. AUTHORITY TO TRANSFER. (a) A court of this state with continuing, exclusive jurisdiction over a child custody proceeding under Chapter 152 or a child support proceeding 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 proceeding 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) Except as otherwise provided by this subsection, 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. If the parties submit to the court an agreed order for transfer, the court shall sign the order without the need for other pleadings.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 2003, 78th Leg., ch. 1036, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 13, eff. September 1, 2007.

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE E. PROTECTION OF THE CHILD

SUBCHAPTER C. ADVERSARY HEARING

Sec. 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.

(d) An order of transfer shall include the following:

(1) the date of any future hearings in the case which have been scheduled by the transferring court;

(2) any date scheduled by the transferring court for the dismissal of the suit under Section 263.401; and

(3) the names and contact information of attorneys ad litem and any guardian ad litem.

(e) The transferee court may, in its discretion, retain any attorney ad litem or guardian ad litem appointed by the transferor court. If the court in its discretion finds that the appointment of a substitute attorney ad litem or guardian ad litem is appropriate, the court must appoint any substitute attorney ad litem or guardian ad litem not later than ten days

after receipt of the order of transfer or by the time of the first scheduled hearing after the transfer, whichever occurs first.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 575, Sec. 22, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, Sec. 22, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 41, eff. Sept. 1, 1999.

Sec. 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, Sec. 1, eff. April 20, 1995.

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Supporting Texas Family Code Amendments Related to Indigent Parents Involved in Child Protective Services Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Texas Judicial Council embraces the principles that our nation promises justice for all, not just for those who can afford to pay for it; and

WHEREAS, parents involved in child protective services cases are entitled to a court appointed attorney when they are indigent and appear in opposition to the state's suit; and

WHEREAS, Family Code Sections 107.013 and 263.201 should be amended to establish guidelines for determining indigence and clarify that parents are entitled to a court appointed attorney when they are indigent and appear in opposition to the state's suit, and

WHEREAS, Section 107.013 should be amended further to reorder the subsections for consistency and to clarify that when both parents of the child are entitled to the appointment of an attorney and the court finds that the interests of the parents are not in conflict and there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties, the court may appoint one attorney to represent the interests of both parents; and

WHEREAS Section 107.0141 should be added to provide the option for courts to appoint attorneys for a limited period to assist with locating the parents, establishing indigence, and preparing for the Texas Family Code Chapter 262 Adversary Hearing; and

WHEREAS Section 262.201 would be amended to instruct any judge presiding over the Adversary Hearing to determine indigence and eligibility of the parent to have court appointed counsel prior to the commencement of the adversary hearing if the parent appears in opposition and states he or she is indigent.

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports the Supreme Court of Children's Commission request for these amendments to the Texas Family Code.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council

Contact: Tina Amberboy
Executive Director, Children's Commission
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