

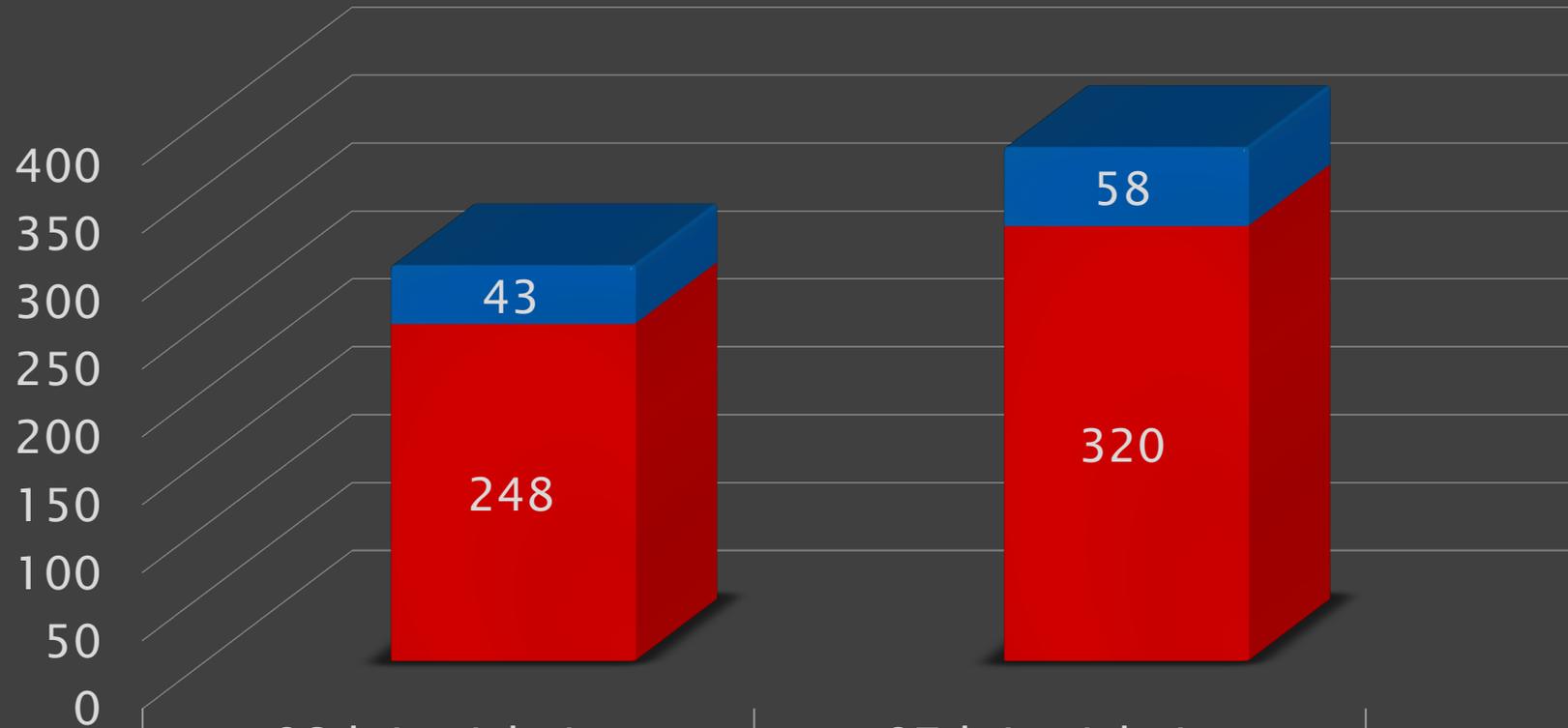


**12th Annual Child Protection Court Ad  
Litem Seminar  
February 24, 2022  
87th Legislative Session Update on CPS-  
Related Matters**

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**Dylan Moench  
Legal Representation Director  
Children's Commission**

# Child Welfare Legislation Tracked by the Children's Commission



■ Bills Passed into Law	43	58
■ Bills Filed	248	320

# Referrals and Investigations

# Mandatory Reporters

- **HB 3379: Tex. Fam. Code § 261.101(a), (b), (b-1) Amended**
  - Changes the mandatory reporter statute to require having "reasonable cause" rather than "cause" to believe a child is abused or neglected.
  - *Effective Date: September 1, 2021*

# Neglect, Redefined

- **HB 567: Tex. Fam. Code § 261.001(4) Amended**
  - Changes the definition of “neglect.”
  - A person’s acts or omissions must now evidence “blatant disregard” for the consequences of their actions or inactions that results in harm or immediate danger to the child’s physical health or safety.
  - Instead of defining neglect as conduct that results in a “substantial risk,” the conduct must now constitute “immediate danger” to the child to constitute neglect.
  - *Effective Date: September 1, 2021*
- **HB 2536: Tex. Fam. Code § 261.001(4) Amended**
  - Excludes from the definition of neglect the decision to seek a second opinion for a child's medical care or to transfer a child’s medical care to a new provider or facility from the definition of neglect.
  - *Effective Date: May 15, 2021*

# Questions

- How will the new definition of neglect impact the court process?
- What impact will the revised neglect definition have on emergency removals?

# Recordings of Interviews

- **HB 135: Tex. Fam. Code §§ 261.3027 and 261.3091 New Language**
  - Requires a DFPS investigator to inform the alleged perpetrator of their right to make an audio or video recording of the interview, and that the recording is subject to subpoena.
  - Requires the investigator to document that notice of the right was provided to the parent.
    - DFPS must document two copies of the written notice signed by the person: one retained by the person and the other retained in the DFPS case file.
  - Before conducting the interview, DFPS must also notify the person in writing that they may request an administrative review of the DFPS findings and the person must sign an acknowledgement of receipt.
  - *Effective Date: September 1, 2021*

# Questions

- Will we see more interviews recorded/subpoenaed?
- How will that be handled per adversary hearing discovery disclosures?

# Filing a Petition

# Pleadings

- **HB 567: Tex. Fam. Code § 161.101 New Language**
  - Codifies that a petition or motion filed by DFPS in a suit for termination of the parent-child relationship is subject to Civil Practice and Remedies Code Chapter 10 and Texas Rules of Civil Procedure Rule 13.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Questions

- New language is only a restatement of existing law for emphasis but is intended to change practices that did not comply with that practice.
- How does this apply to prospective pleadings?
  - Grounds (N), (O), and possibly (Q)

# Court Ordered Services

# Concurrent Stages

- **DFPS Policy 2400 Request for Motion to Participate / Court Ordered Services (MTP/COS):**
  - A court order to participate in services will be sought by Child Protective Investigations (CPI) when a parent or legal guardian is uncooperative or unwilling to participate in services that directly address the danger indicator or risk factors that cause concern for child safety.
  - To seek filing of an MTP/COS case there must be a continuing danger to a child's safety caused by the behavior of the parent or legal guardian and one of the following circumstances exist:
    - There is a validated allegation that a child is a victim of abuse or neglect (known as Reason to Believe [RTB]), or
    - There is a substantial risk of abuse or neglect.
    - If the attorney representing DFPS determines that there is no legal basis for an MTP/COS case, or if the court denies the order, the investigation will be closed.
  - *Updated October 1, 2021*

# Court Ordered Services

- **HB 567: Tex. Fam. Code § 264.203 Amended**
  - Overhauls Tex. Fam. Code § 264.203, sometimes referred to as Motion to Participate or Court Ordered Services.
  - DFPS must file a suit in the jurisdiction where the child is located, and the petition must be accompanied by an affidavit stating sufficient facts for the court to make the required findings. The court must hold a hearing within 14 days of filing the petition, may grant a 14-day extension for good cause, and may render temporary restraining orders per Tex. Fam. Code § 105.001.
  - Appointments of attorneys ad litem (AALs) for parents and children is required when the petition is filed. However, if the parent is not found indigent, the attorney for the parent may be dismissed at the 14-day hearing and the court must order the parent to pay the attorney's cost.

# Court Ordered Services, cont.

- **HB 567: Tex. Fam. Code § 264.203 Amended**
  - The court must deny the petition unless it makes findings under the ordinary prudence and caution standard that abuse and neglect has occurred, or there is substantial risk of abuse or neglect or continuing danger and that services are necessary to ensure the physical health or safety of the child.
  - Services ordered must be narrowly tailored to the court's findings and may only apply to a perpetrator of the alleged abuse or neglect. The court must review the order within 90 days and the order expires in 180 days unless extended by the court. The court may extend the order for 180 days upon a showing by DFPS of a continuing need for the order and may extend an additional 180 days if the court finds that the extension is necessary to complete the services ordered, DFPS made a good faith effort to provide services, the parent made a good faith effort to complete services, completing services is necessary to ensure the child's safety, and the extension is requested by the parent or their attorney.

# Questions

- What pleadings are appropriate?
  - Is a SAPCR required/permitted?
- What orders are permitted per Tex. Fam. Code §105.001?
  - Does the court have the authority to make orders regarding possession/custody of the child?
  - What is the scope of representation for the court-appointed attorneys for parents?
- What if a parent is in violation of the DFPS safety plan, but the safety plan is not an order of the court?
- What are the options for a court if the parent does not comply with the court's orders?
- What happens when a parent obtains their own services at their own expense? (HB 3041, Tex. Fam. Code § 264.2031)
- What happens when a parent obtains their own services at their own expense? ?

# Removal

# Repeal of Non- Emergency Removals

- **HB 567: Repeals Tex. Fam. Code Sections**
  - 262.113
    - Non-Emergency Removal (NER)
  - 262.1131
    - Temporary Restraining Order after NER
  - 262.201(b)
    - Timing of Adversary Hearing after NER
  - 262.201(j)
    - Temporary Order after Adversary Hearing following NER
  - *Effective Date: September 1, 2021*

# Concurrent Stages

- **DFPS Policy 2400 Referring a Case from Investigations to Voluntary or Court Ordered Family-Based Safety Services (FBSS)**
  - If any of these circumstances exist, the family will not be referred to FBSS and CPI will seek legal removal of the child:
    - Parent or legal guardian caused serious physical harm to the child and there is no protective parent/legal guardian, and/or there is an unknown perpetrator.
    - There is child sexual abuse and no protective parent/legal guardian.
    - There was a safety plan in the current investigation that the parent or legal guardian did not adhere to, and another incident of abuse or neglect occurred.
    - There is an immediate danger to a child age 0-5 and both parents or legal guardians had a previous legal case addressing the same or similar dangers (COS/MTP or Conservatorship) and their child(ren) were not returned to their care.
    - There is immediate danger and no safety intervention is available or sufficient to mitigate the danger.
  - *Updated October 1, 2021*

# Questions

- What will happen to cases previously filed as Non-Emergency Removals?
  - Will we see more removals, more court ordered services filings, or neither?
- What will be affected by the DFPS policy change?

# Ex Parte Hearings

# Impact of New Definition of Neglect

- **See Tex. Fam. Code § 262.102 Emergency Order Authorizing Possession Of Child.**
  - (a) Before a court may, without prior notice and a hearing, issue a temporary order...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 [emphasis added]*** or sexual abuse and that continuation in the home would be contrary to the child's welfare....

# Insufficient Evidence for Emergency Removal

- **SB 1578: Tex. Fam. Code §§ 262.102(b-1) and 262.104(c) New Language**
  - Forbids an emergency removal order to be based solely on the medical opinion of a doctor under contract with DFPS who has not examined the child.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Insufficient Reason for Removal

- **HB 2536: Tex. Fam. Code § 262.116(a) Amended**
  - Added seeking a second opinion of a child's medical care or transferring medical care to a new provider or facility to the list of legally insufficient reasons for removal.
  - *Effective Date: May 15, 2021*
- **HB 567: Tex. Fam. Code § 262.116(a) Amended**
  - Added allowing a child to engage in independent activities and a parent's positive test for marijuana to the list of legally insufficient circumstances for removal, unless the parent's marijuana use caused significant impairment to the child's physical or mental health or emotional development.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Adversary Hearing

# Placement with Non- Offending Parents

- **HB 567: Tex. Fam. Code § 262.201 (e),(g),(h), and (n) Amended; (g-1) and (q) New Language**
  - Creates a separate set of findings at the Adversary Hearing required for parents who were not involved in the circumstances of the removal. The court must place the child with that parent unless the parent cannot be located, or the court finds that possession of the child by the parent constitutes a continuing danger to the child despite reasonable efforts by DFPS to enable that parent's possession. If the parent is located by DFPS after the Adversary Hearing and makes a written request for possession of the child, DFPS must notify the court and request a hearing.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Questions

- If the court does place with the non-offending parent, does that mean DFPS still gets Temporary Managing Conservatorship?
- If a non-offending parent is located after the initial adversary hearing and requests a hearing, does that require a new full adversarial hearing regarding that parent?
- How does “continuing danger” differ when applied to a non-offending parent?

# Medical Professional Obtained by a Parent

- **SB 1578: Tex. Fam. Code §262.201(i-1) New Language**
  - Requires a court to consider a medical professional opinion obtained by a parent or conservator, or when making findings regarding immediate danger.
  - *Note: Applies only to a SAPCR filed on or after September 1, 2021.*

# Status Hearings

# Narrowly Tailored Service Plan

- **HB 3041: Tex. Fam. Code §263.202(b) Amended**
  - Modifies findings in Status Hearing that the service plan must be “narrowly” not “reasonably” tailored to address specific issues.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Permanency Hearings

# Presumption of Return at the Permanency Hearing

- **HB 567: Tex. Fam. Code § 263.002(c) Amended and (d) New Language**
  - At each Permanency Hearing before a final order, the court must order the child returned to a parent unless the court finds a continuing danger to the physical health and safety of the child and that returning the child to a parent(s) is contrary to the welfare of the child. This determination must be made for each parent. The change does not impact the court's ability to order a monitored return under Tex. Fam. Code § 263.403.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Questions

- Will permanency hearings become more adversarial and evidentiary?
- How does the burden of proof for permanency hearings (preponderance of the evidence) factor into these presumptions?
- How can courts best utilize the monitored return statute?

# Hearings Generally

# AAL's Duty to Report Meeting with Client

- **HB 3774: Tex. Fam. Code § 107.004(d)-(e)  
Amended**
  - The duty to meet with a client prior to each hearing now applies to suits filed under Chapter 264 in addition to suits filed under Chapters 262 and 263.
  - Rather than filing a written statement with the court, an attorney ad litem for a child must now report to the court at each hearing whether they met with the child or the child's caregiver prior to the hearing as required by statute or whether they are requesting a finding of good cause that meeting with the child was not feasible or in the best interest of the child.
  - *Effective Date: September 1, 2021*

# Questions

- What role, if any, do judges have in ensuring AALs report as required?
- What constitutes good cause?
- Should the good cause finding be part of the court order?
- Does a virtual visit still require a good cause request and finding?

# Notifying the OAG about Child Support

- **HB 1227: Tex. Fam. Code §154.001 Amended**
  - Requires the court to notify the Office of the Attorney General within 10 days if a court presiding over a SAPCR involving DFPS orders child support payments or modifies child support payments that requires the payments *now* be made to DFPS.
  - *Effective Date: Applies to a proceeding that is pending in a trial court on or filed after September 1, 2021.*

# QRTP Procedures

- **SB 1575: Tex. Fam. Code §§ 263.00201 New Language; 264.018(a)(5) Amended; 264.1077 New Language**
  - Defines placement in a Qualified Residential Treatment Program (QRTP) as having the meaning assigned by the Family First Prevention Services Act (FFPSA) and requires that within 60 days of a child's placement in a QRTP, the court must consider any assessment required by FFPSA regarding the child's placement, determine whether the child's needs can be met through placement in a foster home and, if not, whether placing the child in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan.
  - The court must then approve or disapprove the placement. Any documentation prepared for the review and documentation regarding approval or disapproval by the court must be included in and made part of the child's permanency plan.
  - *Effective Date: September 1, 2021*

# QRTP Procedures, cont.

- As long as a child remains in a QRTP, DFPS must provide the court with information at the status review hearing and each permanency hearing demonstrating that ongoing assessment of the child's strengths and needs shows the needs of the child cannot be met through placement in a foster home; placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment; and the placement is consistent with the short-term and long-term goals for the child specified in the permanency plan.
- DFPS must also provide information documenting the specific treatment or service needs that will be met for the child in the placement, the length of time the child is expected to need the treatment or services, and the efforts made by DFPS to prepare the child to be placed home, with a foster home, or relative, legal guardian, or adoptive parent.
- The review of a child's placement in a QRTP may be conducted through a remote proceeding and the placement of a child in a QRTP is considered a significant event requiring notice to the parties under Tex. Fam. Code § 264.018(a)(5).

# Questions

- How will courts conduct QRTP placement review hearings?
  - Will courts review QRTP placements outside of statutory status and permanency hearings?
- How should courts approach non-QRTP congregate care placement reviews?
- How will courts handle a request for placement in QRTP by the AAL, guardian ad litem (GAL), or parents' attorney?

# Unlicensed Placements

- **SB 1896:**
  - **Tex. Fam. Code § 264.1071 Amended**
    - DFPS may not allow a child to stay overnight in a DFPS office.
  - **Tex. Fam. Code § 264.107(g) New Language**
    - Allows an employee of a Single Source Continuum Contractor (SSCC), in addition to employees of DFPS, to provide emergency temporary care for a child without placement.
  - *Effective Date: June 14, 2021*

# Termination

# Circumstances Insufficient for Termination

- **HB 567: Tex. Fam. Code § 161.001(c) Amended**
  - Rather than prohibiting the court from making termination findings based on enumerated circumstances (i.e., homeschooling child, declining immunization, etc.), the language now states that evidence of one or more of these circumstances does not constitute the clear and convincing evidence required for termination. Adds “allowing a child to engage in independent activities” to the list of circumstances.
  - *Effective for petitions filed on or after September 1, 2021*

# Questions

- How does the shift from not being able to make a finding based on circumstances listed in Tex. Fam. Code § 161.001 (c) to these circumstances not rising to clear and convincing evidence impact courts?
- What are some examples of “independent activities” that may not be appropriate or typical for a child’s level of maturity, physical condition, developmental abilities, or culture?

# Restrictions on (M) Ground

- **HB 2924: Tex. Fam. Code §§ 161.001(d-1) Amended; 262.2015(b) New Language**
  - Prohibits a court from ordering a finding of termination on the (M) ground unless the petition for termination is filed before the first anniversary of the date DFPS was granted managing conservatorship in a case where the parent's rights were terminated based on (D) & (E) grounds.
  - Deletes prior termination of parental rights from the list of aggravated circumstances under Tex. Fam. Code § 262.2015.
  - *Effective Date: September 1, 2021*

# Questions

- Is the triggering date when TMC is granted or when PMC is granted and what are the consequences of each?

# Final Order

# Verification Regarding PCA

- **SB 1896: Tex. Fam. Code § 263.409 New Language**
  - Before entering a final order awarding permanent custody of a child in DFPS conservatorship to a relative, the court must verify that the relative was offered the opportunity to become a licensed foster placement to qualify for a Permanency Care Assistance (PCA) agreement and that the relative declined and the child placing agency has been notified of this decision.
  - *Effective Date: June 14, 2021*

# Questions

- What does “verify” mean in this instance? Must the relative give testimony, or is testimony by other parties about information given to the relative sufficient?
- How can courts appropriately communicate with an unrepresented person who is not yet a party?

# Continued Appointment of AAL or GAL

- **HB 1315: Tex. Fam. Code § 107.016, Amended**
  - Requires that an order appointing DFPS managing conservator shall continue the appointment of the AAL or the GAL, or the attorney serving in the dual role for the child, as long as the child is in DFPS conservatorship. The court may continue the appointment of both the AAL and the GAL.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Concluding Trial After Commencement

- **HB 567: Tex. Fam. Code § 263.4011 New Language**
  - After commencement of trial on the merits, the court must render a final order in a case brought by DFPS within 90 days with no tolling for recesses. A party may file a mandamus proceeding to compel compliance. The court may grant a good cause extension that specifies the grounds and the length of the extension.
  - *Effective for petitions filed on or after September 1, 2021*

# Questions

- What qualifies as good cause for an extension after a trial has already commenced?
- How should courts treat the unspecified length of time for the extension?

# Post Final Order Permanency Hearings

# Normalcy

- **HB 2058: Tex. Fam. Code § 263.5031 Amended**
  - Adds normalcy requirements from Permanency Hearings Before a Final Order to Permanency Hearings After a Final Order.
  - *Effective Date: September 1, 2021*

# Reinstatement of Parental Rights

# Petition to Reinstatement Parental Rights

- **HB 2926: Tex. Fam. Code §§ 161.301 - 161.304 New Language; 262.1095(a) Amended; 262.114(d) New Language**
  - Allows a petition to reinstate parental rights to be filed by DFPS, an SSCC, the attorney ad litem for a child, or a parent whose rights were involuntarily terminated. If the petitioner is the parent, they must provide DFPS with 45 days notice of their intent to file. Notice of the petition must be served on the child, the county attorney, the child's attorney, DFPS or the SSCC, the former parent (if they are not the petitioner), and the tribe (if the child is subject to ICWA).
  - *Effective Date: September 1, 2021*

# Petition to Reinstatement Parental Rights, cont.

- A petition for reinstatement may be filed no earlier than two years after termination and the child must not have been adopted or in an agreed adoptive placement.
- The petition must include the name of the petitioner; the name and address of the parent; the name, date of birth, and residence of the child; and contact information for any party that participated in the termination hearing that has relevant information to the petition.
- The petition must also include a summary of the termination grounds, a summary of the facts and evidence that demonstrate the parent's current fitness, a statement of the child's consent if the child is 12 years or older, and a summary of the parent's prior requests for reinstatement (if the petitioner is not the parent).

# Petition to Reinstatement Parental Rights, cont.

- A hearing must be held within 60 days, the petitioner has the burden of proof, and the court must find by preponderance of the evidence that reinstatement of parental rights is in the child's best interest, the parent has remedied the conditions that were the grounds for termination, the parent is willing and capable of performing parental duties, two years have passed, the child has not been adopted, and the child consents (if older than 12).
- If the child is younger than 12 years old, the court must consider the child's wishes in making the determination.
- The court may grant, deny, or defer the petition for six months and render a temporary order awarding the parent possessory conservatorship. DFPS must monitor the parent and the court must hold another hearing to revisit the reinstatement when the temporary order expires. If the petition is denied, a new petition may not be filed for one year after the date of the order.

# Questions

- How does an appeal's timeline factor into the timeline of waiting for two years after termination to apply for reinstatement?
- How does a parent obtain the required information for filing?
- What happens if a parent files for reinstatement, but the other parent's rights have not been terminated?
- What happens to the child's benefits such as free state tuition, ETV, etc. if a parent's rights are reinstated?
- How will "involuntarily termination" be defined, and how will it affect relinquishments and settlement?

# Medical Abuse and Neglect

# Medical Abuse and Neglect

- **HB 2536: Tex. Fam. Code § 262.116(a)**  
**Amended**
  - Seeking a second opinion of a child's medical care or transferring medical care to a new provider or facility has been added to the list of legally insufficient reasons for removal.
  - *Effective Date: May 15, 2021*
- **SB 1578: Tex. Fam. Code § 261.30175** **New Language**
  - A health care practitioner who reports suspected abuse or neglect of a child may not provide forensic assessment services in connection with an investigation and DFPS must refer the case to a practitioner who was not involved with the report of suspected abuse or neglect.
  - *Effective Date: September 1, 2021*

# Medical Abuse and Neglect, cont.

- **SB 1578: Tex. Fam. Code §§ 262.102(b-1), 262.104(c) New Language**
  - Forbids an emergency removal order or an emergency removal prior to a court order based solely on the medical opinion of a doctor under contract with DFPS who has not examined the child.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*
- **SB 1578: Tex. Fam. Code § 262.201(i-1) New Language**
  - Courts are required to consider the opinion of a medical professional obtained by the child's parent, managing conservator, possessory conservator, guardian, caretaker, or custodian.
  - *Effective Date: September 1, 2021. Note: Applies to a SAPCR that is filed on or after September 1, 2021.*

# Questions

- At what point does seeking different medical opinions/facilities become medical neglect/abuse?
- How can the court reconcile that the forensic assessment must be made by someone who did not report the suspected abuse or neglect but an emergency removal cannot be based on the opinion of a doctor who did not examine the child? (Tex. Fam. Code §§ 262.102-104 and 262.30175)
  - What about medical neglect cases where the neglect is not taking the child to the doctor?
- What does it mean to “consider” the opinion of medical professional obtained by the parent?
  - Does it require testimony?
  - Must the court make any finding regarding the professional’s opinion?

# Contact

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