

PROCEDURAL PROTECTIONS FOR PARENTAL RIGHTS and CHILDREN'S
RIGHTS.

This is a proposed change to Texas Family Code. This adds a chapter to Title 5. Subtitle B. Chapter 163 is to establish procedural protections for the rights of parent and child.

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 163. PROCEDURES IN SUIT AFFECTING THE PARENT-CHILD
RELATIONSHIP

163.100. NATURE OF PARENTAL RIGHTS. (a) THE RIGHTS OF PARENTS ARISE FROM THE PARENT-CHILD RELATIONSHIP. ONCE ESTABLISHED THIS RELATIONSHIP BECOMES PROTECTED AS FUNDAMENTAL UNDER THE FEDERAL CONSTITUTION. THIS RELATIONSHIP CREATES A PENUMBRA OF RIGHTS FINDING PROTECTION UNDER SPECIFIC FEDERAL CONSTITUTIONAL AMENDMENTS AS WELL AS ASSOCIATION AND PRIVACY DOCTRINES.

163.101. NATURE OF CHILD RIGHTS. (a) THE RIGHTS OF THE CHILD ARE CONCOMITANT TO THE PARENTAL RIGHTS OF THE PARENT AND ARISE FROM THE BIOLOGICAL OR LEGAL CONNECTION IRRESPECTIVE OF THE RELATIONSHIP ESTABLISHED BY THE PARENT.

163.102. PARENTAL PRESUMPTIONS. (a) AT ALL TIMES, UNLESS A PARENT HAS BEEN PROVEN TO BE UNFIT IN A PROPER PROCEEDING,

PARENTS MUST BE PRESUMED FIT AND FIT PARENTS WHEN EXERCISING POSSESSION OVER THEIR CHILD MUST BE PRESUMED TO BE ACTING IN THEIR CHILD'S BEST INTERESTS EVEN WHERE EACH PARENT HAS A DIFFERENT OPINION OF WHAT IS IN THE CHILD'S BEST INTEREST.

163.103. STANDARD OF REVIEW. (a) PARENTAL RIGHTS AND THE CONCOMITANT RIGHTS OF CHILDREN ARE PROTECTED AT STRICT SCRUTINY AGAINST ANY ACTION BY A STATE AGENCY OR ANY ORDER MADE BY A JUDICIAL AGENT REGARDLESS OF WHO PETITIONS FOR THAT RELIEF.

(b) PARENTAL RIGHTS AND CHILD RIGHTS UNDER THIS CHAPTER MUST BE AFFORDED THE FOLLOWING PROCEDURAL PROTECTIONS:

(1) THE STATE BEARS THE BURDEN OF PROOF BEFORE TAKING ANY ACTION UNDULY BURDENING, INFRINGING, LIMITING, DEPRIVING, OR TERMINATING PARENTAL RIGHTS OR CHILD RIGHTS; AND

(2) THE STATE MUST SHOW ON THE RECORD A NARROWLY ARTICULATED COMPELLING STATE INTEREST THAT IS NECESSARY TO ACHIEVE TO AUTHORIZE ACTION; AND

(3) THE STATE MUST SHOW ON THE RECORD THE SPECIFIC STATUTES AUTHORIZING THE STATE ACTION; AND

(4) THE STATE MUST SHOW A FINDING ON THE RECORD THAT THE REFERENCED STATUTES ARE PRECISELY DRAWN TO ACHIEVE ONLY THE ARTICULATED COMPELLING STATE INTEREST WITHOUT LIMITING ANY OTHER FUNDAMENTAL RIGHTS; AND

(5) THE STATE MUST SHOW ON THE RECORD THAT THE ACTIONS TAKEN ARE THE LEAST RESTRICTIVE MEANS OF ACHIEVING THE STATE'S COMPELLING STATE INTERESTS.

163.104. STANDARD OF EVIDENCE. (a) EVIDENCE USED TO JUSTIFY UNDULY BURDENING, INFRINGING, LIMITING, DEPRIVING, OR TERMINATING PARENTAL RIGHTS OR CHILD RIGHTS MUST BE CLEAR AND CONVINCING.

163.105. STATUTORILY OR STATE CONSTITUTIONALLY GRANTED RIGHTS. (a) WHERE THE STATE ESTABLISHES A RIGHT BY STATUTE OR BY STATE CONSTITUTIONAL PROVISION, NO STATE AGENCY OR JUDICIAL AGENT SHALL BURDEN, INFRINGE, LIMIT, DEPRIVE, OR TERMINATE THAT RIGHT EXCEPT BY DUE PROCESS AFFORDING APPROPRIATE PROCEDURAL PROTECTIONS.

163.106. WRITTEN CHARGES REQUIRED. (a) PROCEEDINGS RESULTING IN BURDENING, INFRINGING, LIMITING, DEPRIVING, OR TERMINATING PARENTAL RIGHTS OR CHILD RIGHTS AS A RESULT OF AN ACT OR OMISSION ON THE PART OF A PARENT, SHALL PROCEED ONLY AFTER THAT PARENT HAS BEEN SERVED WITH WRITTEN CHARGES AND HAS BEEN AFFORDED ADEQUATE TIME TO PREPARE A RESPONSE.

163.107. TEMPORARY INTERFERENCE WITH A POSSESSORY INTEREST. (a) ANY TEMPORARY COURT ORDERED INTERFERENCE WITH A POSSESSORY INTEREST TO A CHILD MUST BE PROVEN NECESSARY WITHIN 14 DAYS OF

THE DAY THE INTERFERENCE WAS INITIATED OR THE INTERFERENCE MUST BE IMMEDIATELY TERMINATED.

(1) ANY TEMPORARY ORDER INTERFERING WITH A POSSESSORY INTEREST TO A CHILD SHALL CONTAIN A CLEAR STATEMENT THAT THE ORDER EXPIRES ON A SPECIFIC DATE AND TIME UNLESS SUPERCEDED BY AN ORDER SHOWING THE NECESSITY FOR INTERFERENCE ISSUED BEFORE THAT DATE AND TIME.

(b) THE COURT MAY NOT STACK OR EXTEND TEMPORARY INTERFERENCE WITH A POSSESSORY INTEREST BEYOND THE 14 DAYS UNDER THIS CHAPTER OR AS COMBINED WITH ANY OTHER CHAPTER EXCEPT WHERE SUPERCEDED BY AN ORDER SHOWING NECESSITY.

(c) IF FOR ANY REASON INTERFERENCE WITH A POSSESSORY INTEREST EXCEEDS 14 DAYS WITHOUT AN ORDER CLEARLY ESTABLISHING THE NECESSITY FOR THE INTERFERENCE SERVED ON THE PARENT WHOSE INTEREST IS INTERFERED WITH AND THAT PARENT CANNOT AFFORD AN ATTORNEY, THAT PARENT WILL BE PROVIDED AN ATTORNEY AT STATE EXPENSE WITHOUT DELAY.