

## **BILL ANALYSIS**

C.S.H.B. 1501  
By: Thompson, Senfronia  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note the need to clarify and update the law relating to child custody evaluations. C.S.H.B. 1501 seeks to provide that clarification and update.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1501 amends the Family Code to include a child custody evaluator among the individuals appointed in a suit affecting the parent-child relationship who are immune from liability for civil damages arising from an action taken, a recommendation made, or an opinion given in the suit. The bill includes in the required components of an order for a child custody evaluation a list of the basic elements of such an evaluation and a list of any additional elements of an evaluation required by the court to be completed. The bill excludes an order appointing a child custody evaluator who is qualified on the basis of the evaluator's employment or contract with a domestic relations office from the orders that must contain the required components. The bill includes any additional element ordered by the court in the requirement for a child custody evaluator to complete each basic element of an evaluation before offering an opinion regarding conservatorship of a child who is the subject of a suit or possession of or access to the child and creates an exception to the requirement if the failure to complete an element is satisfactorily explained. The bill establishes four years of age as the minimum age at which a child who is the subject of a suit may be interviewed and revises the basic elements required to be included in an evaluation. The bill specifies that the additional elements of an evaluation provided under state law may be ordered by a court.

C.S.H.B. 1501 authorizes a child custody evaluator to request additional orders from the court if the evaluator considers psychometric testing necessary for the evaluation but lacks specialized training or expertise to use specified tests or if the evaluator identifies the presence of a potentially undiagnosed serious mental illness experienced by an individual who is a subject of the child custody evaluation and the evaluator is not qualified to assess a serious mental illness.

C.S.H.B. 1501 entitles a child custody evaluator appointed by a court to obtain records that relate to any person residing in a residence subject to a child custody evaluation from a local law enforcement authority, a criminal justice agency, a juvenile justice agency, a community

supervision and corrections department, or any other governmental entity. The bill makes such records obtained by a child custody evaluator confidential and exempt from disclosure under state public information law or from disclosure in response to a subpoena or a discovery request. The bill authorizes a child custody evaluator to disclose such information in the child custody evaluation report only to the extent that the evaluator determines that the information is relevant to the evaluation or a recommendation relating to the evaluation. The bill creates a Class A misdemeanor offense for a person who recklessly discloses such confidential information in violation of the bill's provisions.

C.S.H.B. 1501 replaces the requirement for a person conducting a child custody evaluation to file with the court on a date set by the court a report containing the person's findings and conclusions with the requirements that such a person file with the court on a date set by the court notice that the child custody evaluation report is complete and provide a copy of the report, on a specified date, to each party's attorney, each party who is not represented by an attorney, and each attorney ad litem, guardian ad litem, and amicus attorney appointed in the suit. The bill specifies that the disclosure to the court of the contents of the report is subject to the rules of evidence.

C.S.H.B. 1501 amends the Government Code to entitle a child custody evaluator who has been appointed to conduct a child custody evaluation to obtain from the Department of Public Safety (DPS) criminal history record information that relates to a person involved in the evaluation. The bill requires DPS to provide the evaluator with the information not later than the 10th day after the date on which the information is requested and prohibits a child custody evaluator from releasing or disclosing the information to a person other than the court ordering the applicable evaluation, with certain exceptions.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1501 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Section 107.009(a), Family Code, is amended.

SECTION 2. Sections 107.103(a) and (c), Family Code, as redesignated and amended by Chapter 1252 (H.B. 1449), Acts of the 84th Legislature, Regular Session, 2015, are amended to read as follows:

(a) The court, after notice and hearing or on agreement of the parties, may order the preparation of a child custody evaluation regarding:

- (1) the circumstances and condition of:
  - (A) a child who is the subject of a suit;
  - (B) a party to a suit; and
  - (C) if appropriate, the residence of any person requesting conservatorship of,

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Sections 107.103(a) and (c), Family Code, as redesignated and amended by Chapter 1252 (H.B. 1449), Acts of the 84th Legislature, Regular Session, 2015, are amended to read as follows:

(a) The court, after notice and hearing or on agreement of the parties, may order the preparation of a child custody evaluation regarding:

- (1) the circumstances and condition of:
  - (A) a child who is the subject of a suit;
  - (B) a party to a suit; and
  - (C) if appropriate, the residence of any person requesting conservatorship of,

possession of, or access to a child who is the subject of the suit; and  
(2) any issue or question relating to the suit at the request of the court before or during the evaluation process.

(c) An order for a child custody evaluation must include:

- (1) the name of each person who will conduct the evaluation;
- (2) the purpose of the evaluation; ~~and~~
- (3) a list of the basic elements of an evaluation required by Section 107.109(c);
- (4) a list of any additional elements of an evaluation required by the court to be completed, including any additional elements specified in Section 107.109(d); and
- (5) the specific issues or questions to be addressed in the evaluation.

SECTION 3. Sections 107.109(a), (c), and (d), Family Code, are amended to read as follows:

(a) A child custody evaluator may not offer an opinion regarding conservatorship of a child who is the subject of a suit or possession of or access to the child unless each basic element of a child custody evaluation as specified in ~~described by~~ this section and each additional element ordered by the court, if any, has been completed, unless the failure to complete an element is satisfactorily explained as provided by Subsection (b).

(c) The basic elements of a child custody evaluation under this subchapter consist of:

- (1) a personal interview of each party to the suit seeking conservatorship of, possession of, or access to the child;
- (2) interviews, conducted in a developmentally appropriate manner, of each child who is the subject of the suit who is at least four years of age~~, regardless of the age of the child,~~ during a period of possession of each party to the suit but outside the presence of the party;
- (3) observation of each child who is the subject of the suit, regardless of the age of the child, in the presence of each party to the suit, including, as appropriate, during supervised visitation, unless contact between a party and a child is prohibited by

possession of, or access to a child who is the subject of the suit; and  
(2) any issue or question relating to the suit at the request of the court before or during the evaluation process.

(c) Except for an order appointing a child custody evaluator who is qualified under Section 107.104(b)(3), an ~~an~~ order for a child custody evaluation must include:

- (1) the name of each person who will conduct the evaluation;
- (2) the purpose of the evaluation; ~~and~~
- (3) a list of the basic elements of an evaluation required by Section 107.109(c);
- (4) a list of any additional elements of an evaluation required by the court to be completed, including any additional elements specified in Section 107.109(d); and
- (5) the specific issues or questions to be addressed in the evaluation.

SECTION 3. Sections 107.109(a), (c), and (d), Family Code, are amended to read as follows:

(a) A child custody evaluator may not offer an opinion regarding conservatorship of a child who is the subject of a suit or possession of or access to the child unless each basic element of a child custody evaluation as specified in ~~described by~~ this section and each additional element ordered by the court, if any, has been completed, unless the failure to complete an element is satisfactorily explained as provided by Subsection (b).

(c) The basic elements of a child custody evaluation under this subchapter consist of:

- (1) a personal interview of each party to the suit seeking conservatorship of, possession of, or access to the child;
- (2) interviews, conducted in a developmentally appropriate manner, of each child who is the subject of the suit who is at least four years of age~~, regardless of the age of the child,~~ during a period of possession of each party to the suit but outside the presence of the party;
- (3) observation of each child who is the subject of the suit, regardless of the age of the child, in the presence of each party to the suit, including, as appropriate, during supervised visitation, unless contact between a party and a child is prohibited by

court order or the person conducting the evaluation has good cause for not conducting the observation and states the good cause in writing provided to the parties to the suit before the completion of the evaluation;

(4) an observation and, if the child is at least four years of age ~~[old]~~, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate;

(5) the obtaining of available information from relevant collateral sources, including the review of:

(A) relevant school records;

(B) relevant physical and mental health records of each party to the suit and each child who is the subject of the suit;

(C) relevant records of the department obtained under Section 107.111;

(D) criminal history information relating to each child who is the subject of the suit, each party to the suit, and each person who lives with a party to the suit; and

(E) records or information from any other collateral source that may have relevant information;

(6) evaluation of the residence [home environment] of each party seeking conservatorship of a child who is the subject of the suit or possession of or access to the child, unless the condition of the residence [home environment] is identified as not being in dispute in the court order requiring the child custody evaluation;

(7) for each individual residing in a residence subject to the child custody evaluation, consideration of any criminal history information and any contact with the department or a law enforcement agency regarding abuse or neglect; and

(8) assessment of the relationship between each child who is the subject of the suit and each party seeking possession of or access to the child.

(d) The court may order additional elements of a child custody evaluation under this subchapter, including the following [consist of]:

(1) balanced interviews and observations of each child who is the subject of the suit so that a child who is interviewed or observed

court order or the person conducting the evaluation has good cause for not conducting the observation and states the good cause in writing provided to the parties to the suit before the completion of the evaluation;

(4) an observation and, if the child is at least four years of age ~~[old]~~, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate;

(5) the obtaining of information from relevant collateral sources, including the review of:

(A) relevant school records;

(B) relevant physical and mental health records of each party to the suit and each child who is the subject of the suit;

(C) relevant records of the department obtained under Section 107.111;

(D) criminal history information relating to each child who is the subject of the suit, each party to the suit, and each person who lives with a party to the suit; and

(E) notwithstanding other law, records or information from any other collateral source that may have relevant information;

~~(6) [evaluation of the home environment of each party seeking conservatorship of a child who is the subject of the suit or possession of or access to the child, unless the condition of the home environment is identified as not being in dispute in the court order requiring the child custody evaluation;~~

~~[(7)]~~ for each individual residing in a residence subject to the child custody evaluation, consideration of any criminal history information and any contact with the department or a law enforcement agency regarding abuse or neglect; and

~~(7) [(8)]~~ assessment of the relationship between each child who is the subject of the suit and each party seeking possession of or access to the child.

(d) The court may order additional elements of a child custody evaluation under this subchapter, including the following [consist of]:

(1) balanced interviews and observations of each child who is the subject of the suit so that a child who is interviewed or observed

while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

(2) an interview of each individual, including a child who is at least four years of age, residing on a full-time or part-time basis in a residence subject to the child custody evaluation;

(3) evaluation of the residence [~~home environment~~] of each party seeking conservatorship of a child who is the subject of the suit or possession of or access to the child [~~, regardless of whether the home environment is in dispute~~];

(4) observation of a child who is the subject of the suit with each adult who lives in a residence that is the subject of the evaluation;

(5) an interview, if the child is at least four years of age, and observation of a child who is not the subject of the suit but who lives on a full-time or part-time basis in a residence that is the subject of the evaluation;

(6) psychometric testing, if necessary, consistent with Section 107.110; and

(7) the performance of other tasks requested of the evaluator by the court, including:

(A) a joint interview of the parties to the suit; or

(B) the review of any other information that the court determines is relevant.

SECTION 4. Section 107.110(d), Family Code, is amended.

SECTION 5. Section 107.1101(b), Family Code, is amended.

SECTION 6. Subchapter D, Chapter 107, Family Code, is amended.

No equivalent provision, but see SECTION 9 below.

while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

(2) an interview of each individual, including a child who is at least four years of age, residing on a full-time or part-time basis in a residence subject to the child custody evaluation;

(3) evaluation of the residence [~~home environment~~] of each party seeking conservatorship of a child who is the subject of the suit or possession of or access to the child [~~, regardless of whether the home environment is in dispute~~];

(4) observation of a child who is the subject of the suit with each adult who lives in a residence that is the subject of the evaluation;

(5) an interview, if the child is at least four years of age, and observation of a child who is not the subject of the suit but who lives on a full-time or part-time basis in a residence that is the subject of the evaluation;

(6) psychometric testing, if necessary, consistent with Section 107.110; and

(7) the performance of other tasks requested of the evaluator by the court, including:

(A) a joint interview of the parties to the suit; or

(B) the review of any other information that the court determines is relevant.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Sections 107.113(a) and (b), Family Code, are amended to read as follows:

(a) A child custody evaluator who conducts a child custody evaluation shall prepare [~~and file~~] a report containing the evaluator's findings, opinions, recommendations, and answers to specific questions asked by the court relating to the evaluation.

(b) The person conducting a child custody

evaluation shall file with the court on a date set by the court notice that the report under this section is complete. On the earlier of the date the notice is filed or the date required under Section 107.114, the person shall provide a copy of the report to:

(1) each party's attorney;

(2) each party who is not represented by an attorney; and

(3) each attorney ad litem, guardian ad litem, and amicus attorney appointed in the suit [a report containing the person's findings and conclusions. The report shall be made a part of the record of the suit].

SECTION 7. Section 107.114(a), Family Code, is amended to read as follows:

(a) The [Disclosure to the jury of the] contents of a child custody evaluation report prepared under Section 107.113 are [is] subject to the rules of evidence.

SECTION 8. Section 411.1285, Government Code, is amended.

SECTION 9. Section 107.113(b), Family Code, is repealed.

SECTION 10. The changes in law made by this Act apply only to a suit affecting the parent-child relationship that is filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 2017.

SECTION 8. Section 107.114(a), Family Code, is amended to read as follows:

(a) Disclosure to the court or the jury of the contents of a child custody evaluation report prepared under Section 107.113 is subject to the rules of evidence.

SECTION 9. Same as introduced version.

No equivalent provision, but see SECTION 7 above.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.