

## **BILL ANALYSIS**

C.S.H.B. 567  
By: Frank  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised over possible trauma experienced by children who are removed from their homes and placed in foster care as a result of the methods used to remove the child and because of the amount of time it takes for some cases to be decided. Other concerns center on the strength of the justification used for such removals and the statutory guidance that the Department of Family and Protective Services (DFPS) relies on for initiating an abuse or neglect investigation, removing children from their homes and placing them into conservatorship, and terminating parental rights. C.S.H.B. 567 seeks to clarify that guidance and better protect children in such situations by revising and clarifying the procedures and grounds for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship involving DFPS.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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. 567 amends the Family Code to revise the procedures and grounds for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship involving the Department of Family and Protective Services (DFPS).

#### **Grounds for Terminating Parent-Child Relationship or Taking Possession of a Child**

C.S.H.B. 567 establishes that a parent allowing the parent's child to engage in independent activities appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture does not constitute clear and convincing evidence for purposes of a court making a finding by that evidentiary standard and ordering termination of the parent-child relationship. The bill prohibits the following evidence from being used as a basis for DFPS to take possession of the child in an effort to protect the child's health and safety:

- evidence that the parent allowed the parent's child to engage in the appropriate activities; or
- evidence that the parent tested positive for marihuana, unless DFPS has evidence that the parent's use of marihuana has caused significant impairment to the child's physical or mental health or emotional development.

## **Petition and Motion Requirements**

C.S.H.B. 567 subjects a petition or motion filed by DFPS in a suit for termination of the parent-child relationship to Civil Practice and Remedies Code provisions relating to sanctions for frivolous pleadings and motions and to a related rule of civil procedure. The bill also subjects a suit filed by DFPS to compel participation in services to the Texas Rules of Civil Procedure applicable to the filing of an original suit.

## **Definition of Neglect**

C.S.H.B. 567 establishes a general definition of the term "neglect" for purposes of statutory provisions governing the investigation of a report of child abuse or neglect while retaining descriptions of specific conduct that expressly does and does not constitute neglect. Accordingly, the bill provides the following:

- "neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety;
- rather than referencing a substantial risk of harm to a child in the provision describing conduct that constitutes neglect, the provision instead references immediate danger of harm to a child; and
- conduct that does not constitute neglect includes the decision by a person responsible for a child's care, custody, or welfare allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

## **Placement of a Child After Full Adversary Hearing**

C.S.H.B. 567 revises procedures regarding the placement of a child at the conclusion of a full adversary hearing held in an original suit affecting the parent-child relationship filed by a governmental entity that requests permission to take possession of a child without prior notice and hearing or filed by a governmental entity after taking possession of a child in an emergency without a court order. The bill repeals provisions relating to such a suit that requests permission to take possession of a child after notice and hearing.

C.S.H.B. 567 requires the court, if it does not order the return of the child and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, to order possession of the child by that person unless the court finds, specific to each person entitled to possession, the following:

- that the person cannot be located after the exercise of due diligence by DFPS or the person is unable or unwilling to take possession of the child; or
- that reasonable efforts have been made to enable the person's possession of the child but possession by that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including a danger that the child would be a victim of trafficking.

The bill requires a court, if it does not place a child with an applicable person entitled to possession, to place the child with a relative of the child unless the court finds that the placement with a relative is not in the child's best interest.

C.S.H.B. 567 requires DFPS, on receipt of a written request for possession of the child from a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child who was not located before the adversary hearing, to notify the court and request a hearing to determine whether that person is entitled to possession of the child.

## **Review of Placement by Court**

C.S.H.B. 567 removes the requirement for a court, when reviewing the placement of a child under the care of DFPS at a permanency hearing, to make a finding on whether returning the child to the child's home is safe and appropriate and whether the return is in the child's best interest. The bill requires the court instead to order, at the end of such a hearing, DFPS to return the child to the child's parent or parents unless the court finds, with respect to each parent, that there is a continuing danger to the physical health or safety of the child and that returning the child to the child's parent or parents is contrary to the child's welfare. The bill expressly does not prohibit the court from rendering a temporary order of the monitored return of a child to a parent.

## **Time Frame for Rendering Final Order**

C.S.H.B. 567 establishes a 90-day period after the date a trial commences within which a court must render a final order for a child under DFPS care and authorizes a party to file a mandamus proceeding if the court fails to render a final order within that time frame. The bill authorizes the court to grant one 30-day extension of the time frame on a finding that extraordinary circumstances warrant the extension.

## **Court-Ordered Participation in Certain Services**

C.S.H.B. 567 revises provisions with regard to court-ordered participation by a member of the child's household in DFPS-provided, purchased, or referred services. The bill, among other changes, authorizes DFPS to file a suit petitioning the court to render a temporary order requiring such participation. The bill sets out the venue and applicable rules and specifies the content of the required sworn affidavit supporting a petition for court-ordered participation. The bill authorizes the court to render a temporary restraining order and sets the deadline by which the court must hold a hearing on the petition.

C.S.H.B. 567 provides for the immediate appointment of an attorney ad litem to represent the interests of the child and of an attorney ad litem to represent the interests of the parent in such a suit and requires the court to inform each parent of certain rights relating to attorney representation before commencement of the hearing. The bill sets out provisions relating to a parent claiming indigence. The bill provides for the discharge and payment of the attorney ad litem for a parent who is not indigent and for the postponement of any subsequent proceedings to allow such a parent to hire an attorney or provide the parent's attorney time to prepare.

C.S.H.B. 567 requires notice and hearing before an order for participation may be rendered. The bill requires the court, at the conclusion of the hearing, to deny the petition unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that services are necessary to ensure the physical health or safety of the child and that abuse or neglect has occurred or there is a substantial risk of abuse or neglect or continuing danger to the physical health or safety of the child caused by an act or failure to act of the member of the child's household. The bill requires the court, if it renders an order granting the petition, to do the following:

- state its findings in the order;
- make appropriate temporary orders necessary to ensure the safety of the child; and
- order the participation in specific services narrowly tailored to address the findings made by the court.

If the court finds that a member of the child's household did not cause the continuing danger to the physical health or safety of the child or the substantial risk of abuse or neglect, or was not the perpetrator of the abuse or neglect alleged, the court may not require that person to participate in such services.

C.S.H.B. 567 provides for periodic review hearings to assess continued need for an order requiring participation. The bill establishes that such an order expires on the 180th day after the date the order is signed unless the court extends the order on a showing by DFPS of a continuing need for the order after notice and hearing. The bill generally authorizes the court to extend the order only one time for not more than 180 days but sets out certain conditions under which the order may be extended a second time for not more than an additional 180 days. The bill authorizes a person affected by the order to request the court to terminate the order at any time and requires the court to terminate the order on finding the order is no longer needed.

C.S.H.B. 567 repeals the following provisions of the Family Code:

- Section 262.113;
- Section 262.1131; and
- Sections 262.201(b) and (j).

### **EFFECTIVE DATE**

September 1, 2021.

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

While C.S.H.B. 567 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision prohibiting evidence that a parent tested positive for marihuana from being used as a basis for DFPS to take possession of the child unless DFPS has evidence that the parent's use of marihuana has caused significant impairment to the child's physical or mental health or emotional development.

The substitute does not include provisions revising procedures regarding the placement of a child at the conclusion of a full adversary hearing held in an original suit affecting the parent-child relationship filed by a governmental entity that requests permission to take possession of a child after notice and hearing but includes instead the repeal of provisions relating to such a suit.

The substitute changes the evidentiary standard with regard to the requirement for the court to deny the petition to render a temporary order requiring participation by a member of the child's household in DFPS-provided, purchased, or referred services.