

BILL ANALYSIS

C.S.H.B. 2216
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The separation of a family is a significantly traumatic event that should not happen unless absolutely necessary. In 1978, the federal government passed the Indian Child Welfare Act (ICWA) in response to evidence that Native American children were being separated from their families at a disproportionate rate to other groups of people. In 2023, ICWA was affirmed constitutional by the U.S. Supreme Court and has long been considered the gold standard for child welfare policies and practices that should be afforded to all children. The bill author has informed the committee that it is time for all families to be afforded the highest standard available to not only protect their families from unwarranted governmental interference, but to also protect their familial ties to their kin and communities. C.S.H.B. 2216 seeks to enact a "gold standard" statute for conducting child welfare investigations and conservatorship cases in Texas by revising certain procedures and grounds related to the removal and placement of children, including the requisite standard for the findings a court must make before ordering termination of the parent-child relationship and the types of actions the Department of Family and Protective Services must take to return a child to their parent or home before a court may order termination of the parent-child relationship.

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. 2216 amends the Family Code to change certain procedures and grounds related to the removal and placement of children. The bill does the following, generally:

- changes the requisite standard for the findings a court must make before ordering termination of the parent-child relationship from a standard requiring clear and convincing evidence to a standard requiring evidence that is beyond a reasonable doubt and revises certain other related provisions to reflect that standard; and
- changes from reasonable efforts to active efforts the types of actions the Department of Family and Protective Services (DFPS) must take to return a child to the parent or the child's home before a court may order termination of the parent-child relationship and revises certain other related provisions to reflect that change.

Accordingly, the bill defines "active efforts" as affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite a child with the child's family. The bill sets out, revises, and removes, as applicable, certain provisions regarding the termination of the parent-child relationship, the procedures in a suit by a governmental entity to protect the health and safety of

a child, the review of the placement of children under the care of DFPS, and the provision of certain child welfare services.

Termination of the Parent-Child Relationship

Involuntary Termination: Generally

C.S.H.B. 2216 revises, as follows, the conditions under which a court, in a suit for termination filed by DFPS, is explicitly prohibited from ordering the termination of the parent-child relationship unless certain findings regarding certain DFPS efforts to return the child to the parent are made and described in a separate section of the order:

- whereas current law requires the applicable findings to be by clear and convincing evidence, the bill requires them instead to be beyond a reasonable doubt;
- whereas current law requires that the court find and describe in the order with specificity that, despite DFPS having made reasonable efforts to return the child to the parent before commencement of a trial on the merits, a continuing danger remains in the home that prevents the return of the child to the parent, the bill requires that the court instead find and describe with specificity in the order that DFPS made active efforts to return the child to the parent and that despite those active efforts, the continuing danger remains in the home; and
- the bill removes as a condition the requirement that the court find and describe with specificity that reasonable efforts to return the child to the parent have been waived due to aggravated circumstances.

C.S.H.B. 2216 requires a court, in a suit for termination of the parent-child relationship in which DFPS made active efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, to include in a separate section of the termination order written findings describing with specificity evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the parent-child relationship will result in serious emotional or physical injury to the child. The bill establishes that, for purposes of determining a causal relationship between the particular conditions in the child's home, evidence of the existence of one or more of the following factors by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child:

- community or family poverty;
- crowded or inadequate housing;
- the child's residence in a single-parent household;
- the parent's age;
- substance use by the parent;
- nonconforming social behavior by the parent; or
- the parent's isolation of the child from social interactions with family, friends, or members of the community.

The bill establishes that such conduct is considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child or an observable and material impairment to the growth, development, or functioning of the child.

Involuntary Termination: Inability to Care for Child

C.S.H.B. 2216 changes from a standard requiring clear and convincing evidence to a standard requiring evidence that is beyond a reasonable doubt the requisite standard for the proof used by a court to find that the parent has a mental or emotional illness or deficiency rendering the parent unable to provide for the physical, emotional, and mental needs of the child and that such illness or deficiency, in all reasonable probability, will continue to render the parent unable to provide for the child's needs until the child's 18th birthday.

Petition Allegations; Petition and Motion Requirements

C.S.H.B. 2216 requires a petition or motion for termination of the parent-child relationship to specify the underlying facts that support the statutory ground for the termination of the parent-child relationship. The bill requires such a petition or motion filed by DFPS to specify evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the parent-child relationship will result in serious emotional or physical injury to the child. The bill establishes, for purposes of this requirement, that evidence of the existence of one or more of the following factors by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child:

- community or family poverty;
- crowded or inadequate housing;
- the child's residence in a single-parent household;
- the parent's age;
- substance use by the parent;
- nonconforming social behavior by the parent; or
- the parent's isolation of the child from social interactions with family, friends, or members of the community.

The bill establishes that such conduct is considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child or an observable and material impairment to the growth, development, or functioning of the child. These bill provisions apply only to a petition or motion filed by DFPS on or after the bill's effective date. A petition or motion filed by DFPS before that date is governed by the law in effect on the date the petition or motion was filed, and the former law is continued in effect for that purpose.

Order Terminating Parental Rights

C.S.H.B. 2216 changes the requisite standard regarding the requirement that a court finding grounds for termination of the parent-child relationship render an order terminating the relationship from a standard requiring that the finding be by clear and convincing evidence to a standard requiring that the court find grounds for termination beyond a reasonable doubt. The bill also changes the requisite standard for a court's finding when DFPS seeks termination of the parent-child relationship for more than one parent of the child from a standard requiring the court find grounds for termination by clear and convincing evidence for termination for that parent to a standard requiring the court to find grounds for termination for that parent beyond a reasonable doubt.

Procedures in Suit by Governmental Entity to Protect Health and Safety of Child

Authorized Actions by Governmental Entity

C.S.H.B. 2216 revises the provision making the health and safety of the child the paramount concern in determining the reasonable efforts that must be made by a governmental entity with an interest in the child with respect to preventing or eliminating the need to remove a child from the child's home or to make it possible to return a child to the child's home by specifying that those efforts are instead active efforts, as defined by the bill. The bill requires the active efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home, or to make it possible to return a child to the child's home, to be evaluated to ensure the efforts are consistent with the circumstances of the removal of the child from the child's home and provide for the child's safety.

Active Efforts by DFPS

C.S.H.B. 2216 establishes that, in cases in which DFPS is involved in a suit affecting the parent-child relationship, the active efforts of DFPS must involve assisting the parents through the steps of a service plan and with accessing or developing the resources necessary to satisfy the service plan. The bill requires DFPS to tailor the active efforts to the facts and circumstances of each case, including by doing the following:

- conducting a comprehensive assessment of the circumstances of the child's family, with a focus on safe reunification as the most desirable goal;
- identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- conducting or causing to be conducted a diligent search for the child's extended family members and contacting and consulting with extended family members to provide family structure and support for the child and the child's parents;
- taking steps to keep siblings together whenever possible;
- supporting regular visits with parents in the most natural setting possible as well as trial home visits of the child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the child's family, in using and accessing those resources;
- monitoring progress and participation in services;
- considering alternative ways to address the needs of the child's parents and, where appropriate, the family, if the optimum services do not exist or are not available; and
- providing post-reunification services and monitoring.

The bill requires the assistance provided to the parents regarding the service plan to be narrowly tailored to address the specific issues identified in the court's order granting DFPS temporary managing conservatorship or ordering DFPS to provide family preservation services.

Disclosure of Certain Evidence

C.S.H.B. 2216 revises the requirement for DFPS, on the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship or the attorney ad litem for the parent's child, to provide certain information before the full adversary hearing, as follows:

- removes the condition that the requirement is triggered by the request of the applicable attorney;
- specifies that the information must be provided electronically to the parent who is a party to the suit, the attorney for the parent who is a party to the suit, and the attorney ad litem for the parent's child;
- establishes that the information must be provided as soon as practicable but not later than the seventh day before the hearing; and
- includes a copy of the following information among the other information DFPS must currently provide:
 - any medical, psychological, psychiatric, or educational records in DFPS's possession related to the suit and submitted to DFPS from any source, including exculpatory records, regardless of whether DFPS will use the records in court; and
 - any records relating to consultations with physician networks and systems regarding certain medical conditions of a child who is the subject of the suit, including exculpatory consultation records, regardless of whether DFPS will use the records in court.

Taking Possession of the Child: Petitions and Emergency Orders

C.S.H.B. 2216 updates the following provisions to reflect that active efforts, rather than reasonable efforts, are required for the applicable petition or order and related affidavits:

- provisions regarding a petition filed before taking possession of a child;

- provisions regarding an emergency order authorizing possession of a child; and
- provisions regarding a petition filed after taking possession of a child in an emergency.

Standard for Decision at Initial Hearing After Taking Possession of a Child Without a Court Order in an Emergency

C.S.H.B. 2216 makes certain changes with respect to the standard a court must follow before ordering the return of a child at the initial hearing regarding a child taken in possession without a court order by a governmental entity in an emergency. Current law sets out a number of conditions that must be satisfied before the court orders the return of a child at the initial hearing, and the bill changes certain of those conditions as follows:

- whereas current law requires satisfaction that the evidence shows that one of a list of circumstances exist, the bill requires that evidence of the listed circumstances be clear and convincing evidence;
- whereas current law requires satisfaction that reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child, the bill specifies that such efforts are active efforts; and
- whereas current law requires satisfaction that continuation of the child in the home would be contrary to the child's welfare, the bill specifies that satisfaction of that condition is based on evidence of a causal relationship between the particular conditions in the home and the likelihood that continuation of the child in the home will result in serious emotional or physical injury to the child.

Moreover, with respect to the related provision in current law requiring a court that does not order the return of the child at an initial hearing to describe in writing and in a separate section the reasonable efforts, consistent with the applicable circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child, the bill specifies that such efforts are active efforts. In addition, with respect to the evidence of the aforementioned causal relationship, the bill establishes that evidence of the existence of one or more of the following factors by itself does not constitute clear and convincing evidence that continuation of the child in the home is likely to result in serious emotional or physical injury to the child:

- community or family poverty;
- crowded or inadequate housing;
- the child's residence in a single-parent household;
- the parent's age;
- substance use by the parent;
- nonconforming social behavior by the parent; or
- the parent's isolation of the child from social interactions with family, friends, or members of the community.

The bill establishes that such conduct is considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child, or an observable and material impairment to the growth, development, or functioning of the child.

Evaluation of Identified Relatives and Other Designated Individuals; Placement

C.S.H.B. 2216 changes the provision in current law authorizing DFPS, if DFPS determines that the placement is in the best interest of the child, to place a child with a relative or other designated caregiver identified on the proposed child placement resources form, including any adult identified by the child. The bill makes such placement mandatory but retains the requirement that DFPS determine that the placement is in the best interest of the child.

C.S.H.B. 2216 changes, as follows, the provision requiring DFPS to give preference to certain persons in making a placement decision for a child and establishing the order of preference that DFPS must follow in making a placement decision for a child:

- includes, as the third preference in that order, a foster parent with whom a child previously successfully resided while in the temporary managing conservatorship of DFPS;
- exempts DFPS from the requirement to make placements in the applicable order if there is good cause shown to deviate from that order; and
- prohibits DFPS, in making a determination of whether there is good cause shown to deviate from the preferred placement order, from considering as part of the best interest determination the following:
 - the socioeconomic status of the individuals with whom DFPS is considering placing the child; or
 - ordinary bonding between the child and a previous caregiver related to time spent in a nonpreferred placement.

Right to Intervene

C.S.H.B. 2216 authorizes a person, in a suit filed with respect to filing a petition before taking possession of a child or after taking possession of a child in an emergency in which DFPS is appointed as the temporary managing conservator of a child who is the subject of the suit, who is related to a child by blood, marriage, or adoption to file a motion to intervene in the suit if DFPS did not place the child with that person. The bill requires DFPS to notify such a person in writing of the person's right to intervene. The bill requires the court to grant a person's motion to intervene if the court finds the following:

- the person qualifies for a placement preference based on blood, marriage, or adoption; and
- DFPS, without good cause, placed the child with a person with a lower placement preference ranking.

Full Adversary Hearing; Findings of the Court

C.S.H.B. 2216 revises statutory provisions relating to a full adversary hearing and court findings by doing the following:

- with respect to the requirement for the court to inform each parent not represented by an attorney of the right to be represented by an attorney and, if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney:
 - specifies that the court must inform the parent as soon as practicable before commencement of the hearing; and
 - removes an indigent parent's appearance in opposition to the suit as a condition of being informed of the parent's right to a court-appointed attorney;
- removes an indigent parent's request for the appointment of an attorney before the full adversary hearing as a trigger for the requirement for the court to require the parent to complete and file with the court an affidavit of indigence;
- revises the provision requiring the court to make a determination of a parent's indigence before commencement of the full adversary hearing if the appointment of an attorney is requested to require instead that the court make such a determination if the appointment is required;
- with respect to the provision authorizing the court, for good cause shown, to postpone the full adversary hearing for not more than seven days from the date of an attorney's appointment:
 - makes the postponement mandatory; and
 - changes the period of postponement to not more than 30 days from the date of the attorney's appointment;

- with respect to the provision, applicable if a parent who is not indigent appears in opposition to the suit, authorizing the court, for good cause shown, to postpone the full adversary hearing for not more than seven days from the date of the parent's appearance:
 - makes the postponement mandatory; and
 - changes the period of postponement to not more than 30 days from the date of the parent's appearance;
- requires DFPS, if a court postpones or grants a continuance for a full adversary hearing, to immediately modify any existing visitation plan to increase the visitation time for the parent and a child who has been removed; and
- establishes that visitation through online or electronic communication satisfies the increased visitation plan requirement.

C.S.H.B. 2216 revises, as follows, the conditions under which a court, in a suit filed before taking possession of a child or a suit filed after taking possession of a child in an emergency, is explicitly prohibited from ordering the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the child is removed unless certain findings regarding evidence and certain DFPS efforts to return the child to the parent are made:

- whereas current law requires the court to find sufficient evidence to satisfy a person of ordinary prudence and caution that certain circumstances exist, the bill requires the court to find clear and convincing evidence that the circumstances exist;
- whereas current law requires that the court find that the urgent need for protection required the immediate removal of the child and reasonable efforts were made to eliminate or prevent the child's removal, the bill requires the court to find that those efforts instead are active efforts; and
- whereas current law requires that the court find that reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home, the bill requires the court to find that those efforts instead are active efforts.

The bill revises the conditions under which a court, in a suit filed before taking possession of a child or a suit filed after taking possession of a child in an emergency in which the court 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, is explicitly prohibited from ordering possession of the child by that person unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that, specific to each person entitled to possession, certain efforts to enable the person's possession of the child have been made. Whereas current law requires those efforts to be reasonable efforts, the bill requires the court to find that those efforts instead are active efforts. The bill updates two related provisions regarding the contents of a court order rendered at the conclusion of a full adversary hearing under the two aforementioned revised provisions to specify that described efforts made are active efforts, rather than reasonable efforts as provided in the two related provisions. Moreover, the bill updates the provision requiring the court to issue an appropriate temporary order under applicable state law if the court makes certain findings regarding sufficient evidence applicable to a suit filed before taking possession of a child or a suit filed after taking possession of a child in an emergency. The bill conditions issuance of the temporary order instead on a finding of clear and convincing evidence.

Aggravated Circumstances

C.S.H.B. 2216 revises statutory provisions relating to court findings of aggravated circumstances in an adversary hearing by doing the following:

- revises the provisions authorizing a court to waive the requirement of a service plan and the requirement to make reasonable efforts to return the child to a parent to instead prohibit the waiver of the requirement of a service plan and the requirement to make active efforts to return the child to a parent;

- removes as a basis for a finding that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against the child or another child of the parent that would constitute an offense of:
 - injury to a child, elderly individual, or disabled individual; and
 - abandoning or endangering a child, elderly individual, or disabled individual; and
- changes the finding the court makes before it may conduct an initial permanency hearing by removing the requirement that the court find that reasonable efforts to make it possible for the child to safely return to the child's home are not required and replacing it with a finding that the parent has subjected the child to aggravated circumstances.

The bill requires DFPS, on a court's finding that a parent has subjected the child to aggravated circumstances, to create a limited service plan in conjunction with the parent and the parent's attorney, if applicable. The bill establishes that such a plan satisfies the requirement that DFPS make active efforts to return the child to the parent. The plan must comply with any court order rendered in the case pertaining to bond or supervision and may contain only tasks that protect the safety of the child and due process rights of the parent.

Review of Placement of Children Under Care of DFPS

C.S.H.B. 2216 updates the following provisions relating to the review of placements of children under care of DFPS to reflect the bill's requirements for active efforts instead of reasonable efforts:

- provisions relating to a status hearing on matters related to the contents and execution of a service plan filed with the court;
- provisions relating to permanency hearings before and after a final order is rendered with respect to the court's review of the permanency progress report; and
- provisions relating to the periodic extended foster care review hearings for a court with extended jurisdiction over a young adult.

Child Welfare Services

Use of Teleconferencing and Videoconferencing Technology

C.S.H.B. 2216 revises the provision requiring DFPS, in cooperation with district and county courts, to expand the use of teleconferencing and videoconferencing technology as follows:

- removes the specification that the requirement is contingent on the availability of funds; and
- requires DFPS to expand the use of teleconferencing and videoconferencing to facilitate participation by families.

Placement of Children in Conservatorship of DFPS

C.S.H.B. 2216 requires DFPS, in making the initial or subsequent placement decision for a child who is younger than 22 years of age and for whom DFPS has been appointed as managing conservator before the child's 18th birthday or who is the responsibility of an agency with which DFPS has entered into an agreement to provide care and supervision of the child, to give preference to persons in the following order:

- a person related to the child by blood, marriage, or adoption;
- a person with whom the child has a long-standing and significant relationship;
- a foster parent with whom the child previously successfully resided while in the temporary managing conservatorship of DFPS;
- a foster home; and
- a general residential operation.

This provision applies only to an initial or subsequent placement decision made by DFPS on or after the bill's effective date.

Applicability

C.S.H.B. 2216 applies to a suit affecting the parent-child relationship that is filed on or after the bill's effective date. A suit filed before that date is governed by the law in effect on the date that the suit is filed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

January 1, 2027.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2216 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute set out factors the evidence of which by itself does not constitute evidence beyond a reasonable doubt that continuation of the parent-child relationship is likely to result in serious emotional or physical injury to the child in statutory provisions relating to the following:

- a suit for termination of the parent-child relationship;
- a petition or motion for the termination of the parent-child relationship; and
- the requirement for a court to order the return of a child at the initial hearing regarding a child taken in possession without a court order by a governmental entity in an emergency, except under certain conditions.

However, the substitute replaces the factor of substance abuse by the parent, as in the introduced, with the factor of substance use by the parent. The substitute includes provisions absent from the introduced establishing that such factors are considered likely to result in serious emotional or physical injury to the child if the conduct is likely to result in a substantial risk of death, disfigurement, or bodily injury to the child, or an observable and material impairment to the growth, development, or functioning of the child.

The introduced required DFPS's active efforts, in cases in which DFPS is involved in a suit affecting the parent-child relationship, to involve assisting the parents through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. The substitute revises that provision by making the provision applicable to a service plan instead of a case plan.

The substitute includes provisions, which did not appear in the introduced, that do the following:

- require the assistance provided to a parent by DFPS regarding the parent's service plan to be narrowly tailored to address the specific issues identified in the court's order granting DFPS temporary managing conservatorship or ordering DFPS to provide family preservation services;
- require the active efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home, or to make it possible to return a child to the child's home, to be evaluated to ensure the efforts are consistent with the circumstances of the removal of the child from the child's home and provide for the child's safety;
- require DFPS, if a court postpones or grants a continuance for a full adversary hearing, to immediately modify any existing visitation plan to increase the visitation time for the parent and a child who has been removed;
- establish that visitation through online or electronic communication may satisfy the increased visitation plan requirement;

- require DFPS, on a court's finding that a parent has subjected the child to aggravated circumstances, to create a limited service plan in conjunction with the parent and the parent's attorney, if applicable; and
- provide for the following with respect to the limited service plan:
 - the establishment that the plan satisfies the requirement that DFPS make active efforts to return the child to the parent;
 - the requirement for the plan to comply with any court order rendered in the case pertaining to bond or supervision; and
 - the authorization for the plan to contain only tasks that protect the safety of the child and due process rights of the parent.

Both the introduced and the substitute revise the requirement for DFPS, on the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship or the attorney ad litem for the parent's child, to provide certain information before the full adversary hearing. However, the substitute revises the introduced version's provision requiring the information to include a copy of any medical, psychological, or educational records related to the suit and submitted to DFPS from any source by including psychiatric records among the records applicable to the requirement and by specifying that such a copy of any record is in DFPS's possession, whereas the introduced did not.

The introduced repealed provisions relating to the following:

- the authorization for the court to terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship under certain circumstances; and
- the requirement for DFPS to consider placing a child who has previously been in the managing conservatorship DFPS with a foster parent with whom the child previously resided if DFPS determines that placement of the child with a relative or designated caregiver is not in the child's best interest and the placement is available and in the child's best interest.

The substitute does not repeal those provisions.

The substitute changes the bill's effective date from September 1, 2025, as in the introduced, to January 1, 2027.