

SUBJECT: Continuing the Department of Protective and Regulatory Services

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Naishtat, Chavez, Christian, Davila, Maxey, McReynolds, Wohlgemuth

0 nays

1 absent — Krusee

SENATE VOTE: On final passage, April 8 — 31-0

WITNESSES: For — Aaryce Hayes, Advocacy Inc.; Sharon Newsome and Billy D. Young, HELP Association; Rita Powell; Wanda Canales; Billye B. Green; Kenneth Green; Ted Newsome; Virginia Young

Against — Terry Dawson, Victims of Child Abuse Laws; Edward Travis, Metroplex Vocal Inc.; Jean Holekamp; Robert Kenney; Phil Owens; Christy Unekis; Sharon Wade; Nancy Lee Alviar

On — I. William R. Cox, Texas Alliance for Children; Drew T. Durham, Attorney General's Office; Bob Green, Texas Fathers Alliance; John Hawkins, Sunset Advisory Commission; Jack Heeney, Texas Licensed Child Care Association; Jim Hine and Howard Baldwin, Department of Protective and Regulatory Services; Stephen Smith

BACKGROUND
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In 1991, the 72nd Legislature restructured the state's health and human service system and created the Department of Protective and Regulatory Services (DPRS) as a separate agency focused on children, the elderly, and people with disabilities. On September 1, 1992, DPRS assumed all responsibilities for child and adult protective services and child care licensing from the Department of Human Services (DHS). The Department of Mental Health and Mental Retardation (MHMR) also transferred all abuse and neglect investigations in its facilities to DPRS.

The department's primary role is to protect children, the elderly, and persons with disabilities from abuse and neglect. DPRS investigates reports of

mistreatment that meet the statutory definitions of abuse or neglect and provides social services to victims and their families. DPRS also sets minimum standards for and regulates child care providers, both day care and 24-hour providers and maternity homes.

DPRS is governed by a six-member board appointed by the governor with the advice and consent of the Senate. Four board members must have a demonstrated interest in the services provided by DPRS and two members must represent the public. Board members serve staggered six-year terms, with one member designated annually by the governor as chair. Board members adopt rules to ensure compliance with state and federal law, set the minimum standards of care for child care facilities, adopt the level of care rates that regulate foster and substitute care payments, oversee DPRS operations, hire the department's executive director with the governor's approval, appoint advisory committees, and establish divisions as necessary.

DPRS is funded by state and federal funds. Over 50 percent — \$285 million — of its annual budget in fiscal year 1995 came from federal funding sources, including Title IV-A Emergency Assistance, Title IV-B Child Welfare and Family Preservation, Title IV-E Foster Care, Adoption Assistance and Independent Living, Title XIX Medicaid, Title XX Social Services Block Grant and the Child Care Development Block Grant. About 47 percent — \$253 million — is supported by state general revenue and the department's licensing fees. The DPRS budget for fiscal 1996 was \$523,633,585.

DPRS is subject to the Sunset Act and underwent Sunset Advisory Commission review during the past interim. The agency will be abolished September 1, 1997, unless continued by the Legislature.

DIGEST:

CSSB 359 would continue DPRS until September 1, 2009, and implement certain recommendations of the Sunset Advisory Commission. These recommendations include separating investigations from service delivery; establishing a flexible response system; providing for quicker permanent placement of children; streamlining the adoption process; setting standards for contract management; and developing a system to prioritize investigations of abuse, neglect and exploitation in MHMR facilities.

Investigations and response. CSSB 359 would require DPRS, to the extent feasible, to separate investigative responsibilities performed by its employees from the delivery of services to clients and families. DPRS would not be required to establish separate departments for investigations and service delivery, but would have to develop policies and procedures for information exchange between those employees investigating and those delivering services. In developing policies, DPRS would be able to take needs and caseloads in different programs and regions of the state into account.

DPRS and the Department of Mental Health and Mental Retardation (MHMR) would have to develop and implement a single system to track reports and investigations. DPRS would be allowed to prioritize investigations by rule. The bill would require DPRS and MHMR to establish procedures by joint rules for resolving disagreements concerning DPRS investigation findings. The bill would specify that a confirmed finding by DPRS could not be changed by a superintendent of a state MHMR facility or by a director of a community center.

CSSB 359 would require DPRS to coordinate inspections of licensed day care centers and registered family homes to eliminate duplicate and redundant inspections by other state agencies. DPRS would be required to form an interagency task force with the Department of Health (TDH), Department of Human Services (DHS), and the Texas Workforce Commission (TWC) to develop inspection protocols and coordinated inspections.

CSSB 359 also would require DPRS to establish by rule a flexible response system to address reports of child abuse and neglect, starting with a pilot program in a single service region. DPRS could allocate resources by investigating serious reports of child abuse and neglect and providing assessment and family preservation services in less serious cases.

Placement. CSSB 359 would set a 12-month deadline for DPRS to seek termination of parental rights or return a child to the family. A court would be required to issue a final order within 12 months of the date DPRS filed suit to terminate the parent child relationship, unless it granted a 180-day extension order or rendered a temporary order finding that retaining

jurisdiction would be in the child's best interest. The final order would return a child to the parent, terminate the parent child relationship, or name a relative, another person or DPRS as a managing conservator. DPRS would have to consider the noncustodial parent as an option for placing a child removed from the custodial parent.

CSSB 359 would require DPRS to develop a permanency plan for children for whom DPRS had been appointed managing conservator. DPRS would be required to file a permanency progress reports recommending that the suit be dismissed or be continued, evaluating the child's needs, and describing the permanency plan.

DPRS also would be required to begin seeking adoptive homes for children soon after deciding to seek termination of the parent child relationship. The department would have to establish time frames for the initial screening of prospective adoptive parents, evaluate the effectiveness of its employees in expeditiously placing children, establish assessment services around the state to determine needs of families, centralize the monitoring and promoting of permanent placement of children, use more private adoption agencies by providing incentives, encourage foster parents to be approved as adoptive parents, and address failures in making placements within a reasonable time.

The department would have to assess the need for substitute care services throughout the state, contract only to meet determined need, monitor the effectiveness of provider services, and terminate a contract or impose sanctions for violations of performance criteria. Substitute care providers would include child care institutions, child-placing agencies, foster group or family homes, and agency group homes. DPRS would also be required to monitor the performances of foster parents by using objective assessment criteria.

Licensing and administration. DPRS would have to set standards in its contracts that included clearly defined goals, outcomes, sanctions and penalties for noncompliance and specified accounting, reporting and auditing requirements. The department would be required to use risk assessment methodology to monitor a contract's compliance with financial and performance requirements and to ensure all costs were reasonable and necessary.

DPRS would have to publish notice and conduct a hearing before issuing a new license for the operation or expansion of a foster group home in a county with a population of less than 25,000. Before issuing the license, DPRS would have to consider the degree of community support for the application, the impact on the ratio in the local school district of students, and the effect on opportunities for social interaction for the children to be served.

Upon receiving an application to operate or when registering a family home, DPRS would have to conduct background and criminal history checks of the director, owner or operator of the child care facility and on each person 14 years and older who would regularly work or stay at the home. The home or facility would have to reimburse DPRS for the amounts incurred in conducting the background checks. DPRS would be able to deny an application or renewal for a licensed or registered facility based on the results of the criminal history checks.

The department could levy an administrative penalty not to exceed \$100 against registered facilities or licensed family homes violating an order, rule or the law. Each day a violation occurred would be a separate violation; the amount of the penalty would be based on the seriousness of the violation, the economic harm caused, the history of previous violations, the amount necessary to deter future violations, and efforts to correct the violation. CSSB 359 would provide for notice, administrative hearings and judicial review by a court. All penalties collected would be deposited in the general revenue fund.

Hearings. DPRS would be represented by counties in child abuse cases, unless the district attorney or criminal district attorney of the county elected to provide representation. If none of the three could represent DPRS because of a conflict of interest, the attorney general would be required to provide legal representation. If the attorney general could not provide representation, an attorney employed by DPRS could be deputized or the department could contract with a private attorney.

CSSB 359 would require DPRS to transfer its administrative hearings relating to contracts, license revocations and release of information to the

State Office of Administrative Hearings (SOAH). DPRS would be required to reimburse the SOAH for the costs incurred in conducting contested case hearings for the department. This section would not apply to a personnel grievance hearing involving a DPRS employee.

County relations. DPRS would be required to develop and implement a statewide outreach department to provide counties with information and technical assistance regarding the availability of federal funds to pay costs of child protective services. DPRS would designate local department personnel and a statewide coordinator to implement the outreach program and develop a database identifying personnel involved in the program and containing information regarding the date and type of assistance provided to each county. DPRS would have to maintain records of the amount of federal funding received by each county.

The department also could establish a pilot program under which it would enter into agreements with sheriffs of counties with populations less than 25,000 to delegate to them the duty of investigating abuse and neglect reports. Such agreements would have to delineate the responsibilities of both parties, specify that DPRS would assist to remove a child if necessary, provide for the use of advocacy centers or multi-disciplinary teams, and include reimbursement provisions.

CSSB 359 would require DPRS to study issues relating to providing services in areas adjacent to the Mexican border and to develop a plan to provide more efficient services in those areas. DPRS would be required to enter into agreements for coordinated services, to the extent permissible under federal law, with Mexico and its subdivisions.

Information technology. The bill would require DPRS to establish a strategic technology steering committee to evaluate major information technology project proposals. The committee would have to prioritize the major proposals, provide oversight and coordination of projects, assess information needs, define criteria for setting priorities, forecast returns on project investments, evaluate available information resources and review, and approve and evaluate costs and benefits of proposals. The committee would then make recommendations to the executive director.

Across-the-board provisions. The bill would also add standard provisions recommended by the Sunset Commission concerning:

- collection and maintenance of information regarding complaints made against DPRS by developing a centralized tracking system;
- compliance with state and federal programs and facility accessibility laws;
- designation of the board's presiding officer by the governor;
- conflicts of interest of board members and employees;
- board member training;
- separation of policy making and management responsibilities;
- development of an employee career ladder program addressing mobility and advancement opportunities;
- development of an equal employment opportunity policy;
- management of funds in accordance with the State Funds Reform Act;
- preparation of annual financial report;
- methods for license renewal and a time frame and penalty structure for delinquent renewals;
- advertising and competitive bidding practices;
- penalties for violations of state laws or agency rules;
- disciplinary actions and hearing requirements for license revocations;
- reciprocity agreements with other states and waivers of license requirements; and
- continuing education requirements for licensees.

The bill would take effect September 1, 1997. If any agency determined that a federal waiver was needed to implement one of the bill's provisions, it would have to request the waiver and could delay implementation of the bill until the waiver was granted.

**SUPPORTERS
SAY:**

CSSB 359 would improve the services DPRS now is providing to vulnerable groups such as children, the elderly, and the disabled. The bill would also implement many Texas Performance Review and Sunset Advisory Commission recommendations.

The separation of investigations and service delivery within DPRS would result in better focused and trained investigators, while social workers would be allowed to concentrate on providing direct family services. Under the current system, DPRS caseworkers serve conflicting roles as both investigators of abuse and neglect reports and as social workers attempting to work with the same family to solve the problems. Building trust and developing partnership with the family is difficult for the same caseworker who investigated and may have removed a child from the home.

A flexible response system to address child abuse and neglect reports is needed to keep limited staff resources from being diverted away from serious cases of abuse. Currently, DPRS must thoroughly investigate all child abuse or neglect reports regardless of severity. Child welfare experts recommend a more flexible approach, and many states have adopted a system in which full investigations are reserved for serious cases and family assessment or crisis intervention are used to deal with less serious incidents. A more flexible response system also would help address the false child abuse reports problem. The bill would also provide for better and more training for caseworkers and for a consistent statewide complaint process developed by the executive director. This would also help correct lack of enforcement regarding false abuse reports.

A 12-month deadline for DPRS to seek termination of parental rights or return a child to the family coupled with improvements in the department's adoption process would prevent children from remaining in the state care for long periods of time, moving from one foster home to another. Experts agree that this type of placement, particularly for abused or neglected children, can impair development and lead to behavioral problems later in life. In 1995, the average stay for Texas children in substitute care was 22 months.

Setting standards within DPRS contracts would help the department detect poor performance, waste, misuse or fraud. Contracting problems at DPRS have resulted from a lack of a centralized policy, monitoring and accountability. These weaknesses have resulted in financial irregularities by some providers and subsequent requests for reimbursement from the federal government for questionable payments. DPRS currently purchases substitute care services from providers at a fixed daily rate for each child in

their care. This methodology does not guarantee that contractors are compensated only for reasonable and necessary costs.

A common system of tracking cases between DPRS and MHMR would improve abuse and neglect investigations within MHMR facilities that are currently hampered by poor coordination.

Child care centers are subject to duplicate inspection by federal, state, city and county officials. Many of the inspection items are similar and some even have conflicting requirements. No processes are in place to coordinate the inspecting agencies' activities or to share and compare their data. By requiring DPRS to coordinate with TDH, DHS and TWC, the bill would eliminate duplicate and redundant inspections and provide for a better use of resources. CSSB 359 would also require DPRS to establish, if feasible, a database with inspection information and to share information with other agencies.

By clearly establishing the hierarchy of legal representation of DPRS child abuse cases and by requiring county attorneys to represent DPRS, the bill would address problems in 59 counties that have abdicated their responsibility and refused to represent DPRS in court. In order to protect abused children and help them move quickly towards a permanent placement, DPRS must have timely and competent legal representation.

The establishment of a strategic technology steering committee would allow DPRS to coordinate the development and use of information technology. The department's substantial investments in information systems are not fully supported by agencywide strategic project analysis and oversight. Without a point of central accountability for information systems, DPRS runs the risk of committing millions of dollars to projects that may not capture all information necessary to promote effective daily operations, planning and decision making.

The Legislature has clearly expressed its intent to transfer most hearing functions of state agencies to the State Office of Administrative Hearings (SOAH). However, DPRS still conducts its own administrative hearings relating to contracts, license revocations, and information releases. The bill would require the transfer of these functions to the SOAH.

By authorizing DPRS to assess administrative penalties of up to \$100 per day for violations of statutes and rules, DPRS would have the flexibility to address violations by severity. The department's child care licensing program has limited enforcement ability because it lacks administrative penalty authority. This has resulted in DPRS taking formal action against only 122 of the more than 95,000 validated violations found in 1995. Furthermore, these standards and rules were written to protect the health and safety of children and even leaving an electrical socket uncovered is a serious violation because of the potential of injury to a child.

The bill would require DPRS to consider noncustodial parents as an option for placing children removed from the custodial parent rather than requiring placement because a court hearing could be required to validate a department finding that such placement was not in the best interests of the child. This would hamper and slow down the placement process. Furthermore, automatically giving children to noncustodial parents or relatives might also give the abusive parent greater access to the child.

The bill also specifically states that DPRS employees who commit perjury, fabricate evidence, or knowingly conceal information that would clear the name of an alleged abuser would not have immunity under the law.

CSSB 359 would provide for a pilot program of turning investigations over to law enforcement personnel in certain counties in order to assess the effect of using law enforcement resources for investigations.

**OPPONENTS
SAY:**

Many of the standards and regulations for child care centers are broad, vague and loosely written, yet CSSB 359 would give inspectors arbitrary discretion on whether or not to fine a center up to \$100 a day. For example, one rule states that children who appear ill must be sent home. It would also be unfairly punitive to fine a center \$100 for something as trivial as forgetting to place the electric socket guards back on once after vacuuming. Furthermore, in rural areas the many providers of child care are nonprofit centers that would not be able to survive these kinds of financial penalties. Most centers have a good history of coming quickly into compliance when cited for violations; there is no need to levy these kinds of penalties.

Although the bill would provide that knowingly or intentionally filing false reports would be a Class B misdemeanor, punishable by a maximum penalty of 180 days in jail and a \$2,000 fine, it would include no requirement that DPRS enforce these laws where false allegations of abuse are hurled during custody and post divorce battles. Furthermore, the bill also should provide for civil remedies, including license revocation, against DPRS caseworkers who break federal and state laws and refuse to follow standards. The bill should also turn all investigations over to law enforcement instead of simply separating investigations within DPRS.

CSSB 359 would require only that DPRS consider the noncustodial parent as an option for placing a child removed from the custodial parent. The bill should be strengthened to require a child to be placed with noncustodial parent when removed from the custodial parent absent any finding that this would not be in the child's best interest. If there is such a finding, DPRS should look to the extended family and then only as a last resort place the child in foster care.

NOTES:

The committee substitute changed the Senate-passed version to the bill by:

- providing that the complaint process would have to include an appeal opportunity without participation of the ombudsman;
- specifying that DPRS would not be prohibited from entering interagency and interlocal agreements under the Government Code;
- substituting standard sunset language on equal employment opportunity policies;
- allowing DPRS to maintain local bank or savings accounts for clients;
- requiring review of child care monitoring inspections upon completion of inspection;
- perfecting the requirement for public notice and hearing for substitute car licenses;
- requiring background checks of child care facilities and operators;
- replacing language outlining specific procedures with a requirement that DPRS and MHMR establish procedures by rule;
- creating a law enforcement pilot program; and
- authorizing the attorney general to deputize DPRS attorneys.

Rep. Wohlgemuth plans to offer several floor amendments relating to staying a suit to terminate the parent child relationship if criminal charges are pending, defining family preservation, mandatory reporting of child abuse, employee immunity, and placement of children.

Rep. Christian plans to offer a floor amendment that would allow counties with populations of 500,000 or more to delegate child abuse investigations to law enforcement and would establish a local citizens review board to review the pilot program.

Two related bills, HB 1826 and HB 1091 by Goodman, revising child abuse and neglect statutes and relating to adoption procedures have passed both the House and the Senate and await action by the governor.