

SUBJECT: Child protective services revisions and foster children's bill of rights

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Rose, Herrero, Darby, Elkins, Hernandez, Naishtat, Walle

0 nays

2 absent — Hughes, Legler

SENATE VOTE: On final passage, April 2 — 31-0

WITNESSES: For — I. William R. Cox, Texas Association of Child Placing Agencies, Texas Foster Family Association; (*Registered, but did not testify:* Diana Martinez, TexProtects, The Texas Association for the Protection of Children)

Against — None

BACKGROUND: Foster care is the child welfare system operated by the Department of Family and Protective Services (DFPS) and used when children need to be removed from their homes due to abuse or neglect and no appropriate family member, relative, or family friend is willing or able to care for them. Under these situations, a court will ask DFPS to place the child in a temporary foster care setting until the child is able to either return to live with a parent or be adopted into a permanent family.

The 79th Legislature in 2005 enacted SB 6 by Nelson, authorizing the hiring of additional caseworkers. The 80th Legislature in 2007 enacted SB 758 by Nelson, strengthening licensing requirements, increasing the frequency of group home inspections, and expanding the drug-endangered child initiative, in response to gaps in the foster care oversight system.

DIGEST: **Studies.** CSSB 69 would require DFPS to study the feasibility of implementing a financial incentive program to encourage foster children to achieve and maintain the progress goals set under the child's individualized treatment or service plan. No later than December 1, 2010, the department would report its findings to various legislative leaders.

The Health and Human Services Commission (HHSC) would coordinate with DFPS to study the feasibility of making changes to foster care assessment, placement, and reimbursement methodologies to improve outcomes for foster children. No later than September 1, 2010, HHSC would report its findings and recommendations to various legislative leaders. DFPS would consider recommendations from the report when developing the department's request for legislative appropriations to be considered by the 82nd Legislature.

**Notice of change of placement.** CSSB 69 would require DFPS to provide written notice to a substitute care provider and any child-placing agency involved with a child before the department could change the child's substitute care provider, except in the case of an emergency or if required by court order. The department would provide the notice no later than the fifth day before the date the child's substitute care provider was changed.

**Exit survey.** DFPS would adopt a policy to provide an exit survey of each foster parent who decided to leave the foster care system, encouraging foster parents to state in their own words their reasons for deciding to leave the system. No later than December 1 of each odd-numbered year, DFPS would submit a report summarizing the exit survey results to various legislative leaders.

**Preparation for Adult Living (PAL) Program.** DFPS would ensure that each individual enrolled in the PAL program received information about available community resources in the county in which the individual intended to reside to assist in obtaining employment, job training, educational services, housing, food, and health care. If no community resources were available, the department would ensure that the individual received information about any community resources available in surrounding counties.

**Foster children's bill of rights.** CSSB 69 would require each child in foster care be informed of the child's rights under state or federal law or policy relating to:

- abuse, neglect, exploitation, discrimination, and harassment;
- food, clothing, shelter, and education;
- medical, dental, vision, and mental health services;
- emergency behavior intervention;

- placement with siblings and contacts with family members;
- privacy, including storage space, searches, mail, and telephone conversations;
- participation in school-related extracurricular or community activities;
- interactions with individuals outside of the foster care system, including teachers, church members, mentors, and friends;
- contact and communication with a caseworker, attorney ad litem, guardian ad litem, and court-appointed special advocate (CASA);
- religious services and activities;
- confidentiality of the child's records;
- job skill, personal finances, and preparation for adulthood;
- participation in court hearings involving the child;
- participation in the development of service and treatment plans;
- the advocacy and protection of rights of a child with a disability; and
- any other subject affecting the child's ability to receive care and treatment in the least restrictive environment that was most like a family setting, consistent with the best interests and needs of the child.

DFPS would provide a written copy of the foster children's bill of rights to each foster child in the child's primary language, if possible, and inform the child orally in simple, nontechnical terms, in the child's primary language, if possible, or for a child who has a disability, through any means that could reasonably be expected to result in successful communication with the child. The foster child could sign a document acknowledging the child's understanding of the foster children's bill of rights, and if the child signed the document, DFPS would place it in the child's case file.

An agency foster group home, agency foster home, foster group home, foster home, or other facility in which a child was placed in foster care would provide a copy of the foster children's bill of rights to a child upon

request, and the bill of rights would have to be printed in English and in a second language.

DFPS would develop and implement a policy for receiving and handling reports that a foster child's rights were not being met. The HHSC executive commissioner and DFPS would ensure that the rules and

policies governing foster care were consistent with state policy and each could adopt rules or policies that provided greater protections for the rights of children in foster care.

The department would promote the participation of foster children and former foster children in educating other foster children about the foster children's bill of rights.

The section of the bill establishing the foster children's bill of rights would not create a cause of action.

**Committee on licensing standards.** CSSB 69 would require that the committee on licensing standards meet three times a year instead of twice a year as currently required, and that at least one meeting each year would provide an opportunity for public testimony. The bill would also require that the committee's review and analysis include the department's policies, standards, and procedures relating to the licensing of foster care providers and any modifications that could be made to increase the capacity of a foster care provider while continuing to ensure the health and safety of children placed in the care of the foster care provider. The committee would report its findings to DFPS and to the Legislature no later than September 1 of each year, rather than December 1 as currently required.

**Caseload standards.** DFPS would spend up to \$12 million for the biennium to increase the number of available caseworkers with the goal of ensuring that 95 percent of foster children or children whose parent, managing conservator, possessory conservator, guardian, caretaker, or custodian was receiving family-based services from the department were visited by a caseworker at least one time each month, subject to the appropriation of money from funds for that specific purpose appropriated in the general appropriations act for fiscal 2010-2011.

**Other provisions.** DFPS would establish a pilot program under which the foster parents of a child could provide mentoring services to the child's parents to assist the child's parents in complying with the terms of the service plan.

When assessing the needs of a child in a service level review, DFPS would consider whether, during the 90 days preceding the date of the review, the child had engaged in behavior that caused life-threatening injury to the

child or another individual or had undergone a psychiatric hospitalization.

CSSB 69 would allow DFPS to contract with child-placing agencies throughout the state to provide office space for DFPS employees providing conservatorship services and performing licensing functions.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSSB 69 would build on the past efforts of SB 6 and SB 758 by Nelson to strengthen the foster system and improve care for abused, neglected, and abandoned children in Texas. A 2005 Harvard study indicated that foster children were more likely to suffer from post-traumatic stress disorder than combat veterans. Other studies have found that foster children are at greater risk of homelessness, teen pregnancy, and entering the criminal justice system. The state has a responsibility to care for these children and equip them with the tools they will need to be successful in life.

Provisions of the bill, such as informing PAL program participants of available community services, would help foster youth aging out of the system to successfully transition into living independently as adults. In addition, the studies required by CSSB 69 would seek new and innovative ways of improving the system and providing incentives for foster children to achieve their goals similar to those used by parents with their children in intact families.

The bill also would seek to improve conditions for foster parents by conducting exit surveys of foster parents leaving the system in an effort to identify systemic issues leading to frustration among caregivers in order to make recommendations and initiate required changes to better support foster families.

**Foster children's bill of rights.** By codifying in statute a comprehensive bill of rights for foster children, CSSB 69 would ensure that young people who were a part of the foster care system in Texas were aware of their protections under the law. This would enable these children to advocate effectively on their own behalf and provide guidance for court-appointed special advocates and other foster care professionals.

The rights included in CSSB 69 are taken from various sections of the Texas Administrative Code, the Texas Family Code, federal law, and other sources. The bill would compile these rights and protections in one place

in the Family Code and make them available and understandable so that foster children could know the legal rights they were afforded.

All of the rights afforded to foster children under CSSB 69 would be reasonable and appropriate for any child, and foster children deserve these protections. Children in the foster care system have experienced trying and often traumatic experiences. The Foster Children's Bill of Rights would let these children know that they could benefit from reasonable protections, such as the right to privacy, freedom from abuse and harassment, the ability to access medical care, the right to file a confidential complaint regarding treatment, and the ability to engage with foster care professionals and the legal system.

The bill specifically would state that the rights conferred in the bill were based upon children's rights under state or federal law or policy, ensuring that the rights reflected different policies under state and federal law to allow for different levels of care based on a child's needs, and that the foster children's bill of rights would not create a cause of action.

**Caseload standards.** CSSB 69 would require, subject to funding, that DFPS hire more caseworkers to improve the frequency of visits to foster children. Regular visits are crucial to ensure the safety and well-being of a child, and to increase the chance of finding a "forever home" for the child, whether through adoption, living with a relative, or reunification with birth parents. Foster children who do not receive regular visits from caseworkers frequently get "lost" in the system for years, ultimately "aging out" of foster care, where outcomes are grim.

Because of these facts, federal standards require that 95 percent of foster children be visited at least once each month by their caseworker. In 2008, only 74 percent of Texas foster children received visits once a month, resulting in \$4 million in federal fines being imposed upon the state. The state got the money back this time due to a technicality, but next time likely would not. Therefore, the state could spend the money on hiring caseworkers, thereby improving outcomes for foster children, or could continue to fail in its obligations to these abused, neglected, and abandoned children and waste money by paying fines to the federal government.

OPPONENTS  
SAY:

**Foster children's bill of rights.** Some of the foster children's rights included under CSSB 69 would be too broad and could add to the difficulty that foster care providers face when caring for children in their custody. If a child could justify inappropriate behavior by pointing to a right included in the Foster Children's Bill of Rights, the bill could have the unintended consequence of undermining the authority of a foster care provider.

SB 805 by Uresti, which died on the General State Calendar during the 80th Legislature, provided for a foster children's bill of rights but sought to prevent inappropriate use of a right conferred by stating that no right conferred under the bill would require a foster parent or foster care provider to take an action that would impair the health or safety of a child. In this manner, a foster parent could reasonably restrict a right at least to the extent necessary to prevent harm to a child's health or safety.

OTHER  
OPPONENTS  
SAY:

**Foster children's bill of rights.** This bill is unnecessary because all of the foster children's rights included in CSSB 69 currently exist in other areas of statute or code. Foster care providers in the vast majority of cases present a foster child with a list of the child's rights and ask the child to sign documentation verifying that the child understands those rights.

NOTES:

The LBB anticipates a cost of \$10,231,676 for fiscal 2010-2011. The cost of increasing caseworker numbers in an effort to move the agency toward compliance with federal targets for monthly visits between caseworkers and children in conservatorship would be \$6 million per year of the biennium with the method of financing including general revenue funds and federal matching funds.

The House committee substitute differs from the bill as passed by the Senate by adding that in performing a service level review of a child DFPS would consider whether, during the 90 days preceding the review, the child engaged in behavior that caused life-threatening injury to the child or another or had undergone a psychiatric hospitalization. It also specifies that the required expenditure of funds was subject to the appropriation of money for that specific purpose.