

**SUBJECT:** Revising child welfare procedures on removal and termination

**COMMITTEE:** Human Services — committee substitute recommended

**VOTE:** 10 ayes — Hull, Manuel, A. Davis, Dorazio, C. Morales, Noble, Richardson, Schatzline, Slawson, Swanson

1 nay — Rose

**WITNESSES:** For - Brandon Logan, Family Freedom Project; Judy Powell, Parent Guidance Center; Kate Murphy, Texans Care for Children; Julia Hatcher, Texas Association of Family Defense Attorneys; Andrew Brown, Texas Public Policy Foundation; Brad Scalise; Shelly Troberman (*Registered, but did not testify*: Marian Little, Mary M Elizabeth, Austin Justice Coalition; Sarah Berel-Harrop; Thomas Parkinson; Mary Sarver)

Against - (*Registered, but did not testify*: M Paige Williams, Dallas Criminal District Attorney John Creuzot; Christopher Gatewood, Smith County Criminal District Attorneys Office)

On - (*Registered, but did not testify*: Audrey O'Neill, DFPS)

**DIGEST:** CSHB 2216 would amend provisions of the Family Code governing the removal of children from the home and the placement of children following removal. The bill would raise the evidentiary standard for termination of the parent-child relationship from "clear and convincing evidence" to "beyond a reasonable doubt" and make conforming changes throughout the Family Code.

**Active efforts.** The bill also would revise references to “reasonable efforts” by the Department of Family and Protective Services (DFPS) to instead be “active efforts,” defining "active efforts" as affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite a child with the child’s family.

In cases where DFPS was involved in a suit affecting the parent-child relationship, the bill would require the department’s active efforts to include assisting parents through the steps of a service plan and with

accessing or developing the resources necessary to satisfy the plan. DFPS would have to tailor the active efforts to the facts and circumstances of each case, including by:

- 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;
- conducting or causing to be conducted a diligent search for the child's extended family members, and contacting and consulting with extended family to provide the child and parents with family structure and support;
- 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;
- identifying community resources and actively assisting the child's parents or 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 family if the optimum services did not exist or were not available; and
- providing post-reunification services and monitoring.

Assistance regarding the service plan would have to be narrowly tailored to address issues identified in the court's order granting DFPS temporary managing conservatorship of the child or ordering the department to provide family preservation services.

The active efforts under the bill would have to be evaluated to ensure the efforts were consistent with the circumstances of the removal of the child from the home and provided for the child's safety.

**Court orders, petitions, and motions for termination.** The bill would add requirements for court orders, petitions, and motions for the termination of the parent-child relationship to include evidence of a causal relationship between particular home conditions and the likelihood that the continuation of the parent-child relationship would result in serious emotional or physical injury to the child. The bill would specify that evidence of the existence of certain factors, such as community poverty,

crowded housing, or a parent's age, substance use, or social behavior, did not alone constitute evidence beyond a reasonable doubt.

Conduct would be considered likely to result in serious emotional or physical injury to the child if the conduct was 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 bill would remove as a condition under which the court was prohibited from ordering termination of the parent-child relationship the requirement that the court find and describe with specificity that reasonable efforts to return the child to the parent had been waived due to aggravated circumstances.

**Disclosure of certain evidence.** The bill would amend procedures for providing records to parents and their attorneys. The bill would revise provisions to specify that in a suit affecting the parent-child relationship filed by DFPS, the department would be required to provide certain records electronically to the parent party to the suit, the parent's attorney, and the child's attorney ad litem at least seven days before the full adversary hearing, removing the requirement for the parent's attorney to request the records. The bill would add to the list of required records:

- a copy of any relevant medical, psychological, psychiatric, or educational records in DFPS's possession, including exculpatory records, regardless of whether DFPS would use the records in court; and
- a copy of any records relating to consultations with physician networks and systems regarding certain medical conditions, including exculpatory records, regardless of whether DFPS would use the records in court.

**Hearings after emergency possession of a child without a court order.**

For a child taken into DFPS possession without a court order, the bill would specify that the court would have to order the return of a child unless the court was satisfied that clear and convincing evidence, rather than any evidence, of certain circumstances existed.

The bill would require that a certain determination by the court regarding the child's welfare in these circumstances be based on evidence of a

causal relationship between the conditions in the home and the likelihood that the continuation of the child in the home would result in serious emotional or physical injury to the child.

The bill would specify that evidence of the existence of certain factors, such as community poverty, crowded housing, or a parent's age, substance use, or social behavior, did not alone constitute clear and convincing evidence for these purposes. In addition, for the purposes of the court's determination, conduct would be considered likely to result in serious emotional or physical injury to the child if the conduct was 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.

**Placement with identified relatives and designated individuals.** The bill would require, rather than authorize, DFPS to place children with relatives or designated caregivers identified on the proposed child placement resources form if DFPS determined the placement to be in the child's best interest. The bill also would add former foster parents to the preferred order for child placement decisions and specify that DFPS could deviate from the placement order if good cause was shown.

In determining whether good cause was shown to deviate from the preferred placement order, DFPS would be prohibited from considering as part of the best interest determination socioeconomic status or ordinary bonding between a child and a previous caregiver related to time spent in a non-preferred placement.

In a suit to take possession of a child filed without prior notice and a hearing, or a suit filed after taking possession of a child in an emergency, in which DFPS was appointed as the temporary managing conservator of a child, a person who qualified as a placement preference could file a motion to intervene in the suit if DFPS did not place the child with that person. The court would be required to grant the person's motion to intervene if the court found that the person qualified for a placement preference and that DFPS placed the child with a person of lower preference without good cause. The court would have to notify in writing a person with a placement preference of this right to intervene.

**Full adversary hearings.** For certain suits related to taking possession of a child, the bill would remove the provision that an indigent parent not

represented by an attorney appear in opposition to the suit in order for the court to be required to inform the parent of the right to a court appointed attorney. The bill also would remove the requirement that a parent claiming indigence request the appointment of an attorney for a full adversary hearing in order for the court to require the parent to file an affidavit of indigence.

Courts would be required, rather than authorized, to postpone hearings for up to 30, rather than seven, days from the date of an attorney's appointment to allow attorney preparation. If a parent who was not indigent appeared in opposition to a suit, the court would be required to, rather than authorized to, for good cause shown, postpone the hearing for up to 30, rather than seven, days from the parents appearance to allow the parent time to hire an attorney or to provide the attorney time to respond to the petition. If a court postponed or granted a continuance for a full adversary hearing, DFPS would be required to immediately modify any existing visitation plan to increase the visitation time for the parent and a child who had been removed. Virtual visitation could satisfy this requirement.

At the conclusion of a full adversary hearing, the court would be required to order the return of the child to the parent or other person from whom the child was removed unless the court found clear and convincing, rather than sufficient, evidence of certain conditions.

**Aggravated circumstances.** The bill would remove a court's authorization to waive the requirements to develop a service plan and to make active efforts to return the child to a parent.

The bill would remove from conduct constituting subjecting a child to aggravated circumstances conduct constituting an offense under provisions of the Penal Code on injury to a child, elderly individual, or disabled individual, and on abandoning or endangering a child, elderly individual, or disabled individual.

The bill would revise the conditions under which the court would be required to conduct a permanency hearing within 30 days. Rather than on finding that reasonable efforts to make it possible for the child to safely return to the child's home were not required, a permanency hearing would be required on finding that a parent had subjected a child to aggravated circumstances. On finding that a parent had subjected a child to

aggravated circumstances, DFPS would be required to create a limited service plan. The plan would satisfy the requirement that DFPS make active efforts to return the child to the parent and would have to comply with any court order rendered in the case pertaining to bond or supervision. The plan could contain only tasks that protected the safety of the child and due process rights.

**Teleconferencing and videoconferencing.** The bill would revise language to specify that DFPS, in cooperation with district and county courts, would have to expand the use of teleconferencing and videoconferencing with certain individuals in court proceedings, regardless of funding.

**Placement of children in the conservatorship of DFPS.** For the purposes of provisions on the placement of children in the conservatorship of DFPS, the bill would define a “child” to mean a person:

- younger than age 22 for whom DFPS had been appointed managing conservator before the child’s 18<sup>th</sup> birthday; or
- was the responsibility of an agency with which DFPS had entered into an agreement to provide care and supervision of the child.

In making the initial or subsequent placement decision for a child, DFPS would be required 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 had a long-standing relationship;
- a foster parent with whom the child previously successfully resided while in the temporary managing conservatorship of the department;
- a foster home; and
- a general residential operation.

**Effective date.** The bill would take effect January 1, 2027, and would apply only to petitions, motions, suits, or placements made on or after its effective date.

SUPPORTERS  
SAY:

CSHB 2216 would ensure that Texas families involved with DFPS received the highest quality of services and that children were not unnecessarily separated from their parents by applying the casework standards established by the federal Indian Child Welfare Act (ICWA) to

Texas families. By raising the evidentiary thresholds for removing a child from the home and for terminating parental rights, and by requiring and defining active, rather than reasonable, efforts to be made by DFPS, the bill would help to prevent unnecessary removals, which can be traumatic for both children and parents. Raising the evidentiary threshold to “beyond a reasonable doubt” in these child welfare cases would ensure that termination decisions were made with the highest level of judicial scrutiny.

In addition, the bill would reinforce provisions requiring the placement of children with relatives and ensure that family members had a right to intervene, which would help prevent DFPS from deviating from placement prioritization of a relative based solely on economic status or other circumstances. The bill would provide additional safeguards for families and improve access to supportive services. The bill also would allow for greater participation in cases by requiring courts and DFPS to expand the use of teleconferencing and videoconferencing, regardless of funding.

CRITICS  
SAY:

CSHB 2216 would be unnecessary, as existing law promotes family reunification and includes safeguards to support parents in the child welfare system. Applying a “beyond a reasonable doubt” evidentiary standard, which is typically reserved for criminal cases, would be an inappropriate threshold for termination of parental rights in civil child welfare cases.