

## **BILL ANALYSIS**

S.B. 40  
By: Zaffirini  
Human Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under current rules and statutes, the staff at residential care facilities for the mentally retarded retain the responsibility for conducting permanency planning activities for children residing at those institutions. This presents an inherent conflict of interest. A facility that receives funding for keeping a child in a bed may not devote time, energy, and financial resources to developing the community supports needed to move a child to a family. As long as the permanency planning authority is retained by the facility/institution, this reduces the likelihood that children residing in those facilities will actually have the opportunity to return to their birth-families or access family-based alternatives.

S.B. 40 requires agencies to separate the responsibility and authority for permanency planning for children with disabilities from the institutions in which they reside. Under current law, separation of responsibility for permanency planning is permissive, but this bill makes it mandatory.

### **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**

The bill makes conforming changes to reflect the current allocation of responsibilities among health and human services agencies .

The bill requires, rather than authorizes, the Department of Aging and Disability Services (DADS), in implementing permanency planning procedures to develop a permanency plan for each child, to use one of three options:

- delegate the duty to develop a permanency plan to a local mental retardation authority, or enter into a memorandum of understanding with the local mental retardation authority to develop a permanency plan;
- contract with a private entity, other than an entity that provides long-term institutional care; or
- perform the duty using DADS personnel.

The bill provides that a contract or memorandum of understanding must include performance measures by which DADS may evaluate the effectiveness of a local mental retardation authority's or private entity's permanency planning efforts.

The bill references activities to be engaged in by DADS to minimize potential conflicts of interest between the institution in which the child resides or in which institutional care is sought for the child and the best interests of the child.

The bill describes the manner in which an institution in which the child resides shall assist with providing effective permanency planning, and prohibits the institution from providing the child's parent or guardian with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting.

The bill provides, to the extent not otherwise prohibited by state or federal confidentiality laws, that a local mental retardation authority or private entity that enters into a contract or memorandum of understanding to develop a permanency plan for the child shall have access to the child's records.

The bill provides that implementation of any provision of the Act may be delayed if necessary to request and obtain any required waiver or authorization from a federal agency.

**EFFECTIVE DATE**

September 1, 2005