

## **BILL ANALYSIS**

C.S.H.B. 253  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recently, more than 400 children were removed from a compound in Texas because of sexual abuse allegations. A court ruling later determined that reasonable efforts were not made to keep each child in the child's home by removing an alleged perpetrator of the abuse instead of removing the child. There is concern that courts do not consider the actions of all adults in a household before determining whether the child or the alleged abuser should be removed from the home. C.S.H.B. 253 seeks to address this issue by requiring a court to issue an order to remove an alleged perpetrator from a home under certain conditions and by enhancing the penalties of an offense relating to bigamy and an offense of failing to perform a duty relating to filing a birth certificate or report of birth as required by law.

### **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. 253 amends the Code of Criminal Procedure to include bigamy among the offenses for which the statute of limitations is seven years from the date of the commission of the offense, except that the statute of limitation for such an offense is 10 years from the 18th birthday of the victim of the offense if the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed.

C.S.H.B. 253 amends the Penal Code to enhance the penalty for an offense of bigamy from a third degree felony to a second degree felony if the investigation of the offense shows that the person whom the actor marries or purports to marry or with whom the actor lives under the appearance of being married is 17 years of age, rather than 16 years of age or older, and to a first degree felony if the person is 16 years of age or younger, rather than younger than 16 years of age.

C.S.H.B. 253 amends the Family Code to authorize a court, in a proceeding relating to a suit by the Department of Family and Protective Services (DFPS) requesting an order for possession of a child and determining reasonable efforts required to prevent or eliminate the need for DFPS to remove the child from the child's home, to find that based on the circumstances no reasonable efforts would prevent or eliminate that need and DFPS satisfied the reasonable efforts requirement even though DFPS made no such efforts. The bill includes among the conditions under which a court is authorized to issue a temporary restraining order in a suit by DFPS for the removal of an alleged perpetrator of child abuse that the department's petition states facts sufficient to satisfy the court that the parent or other adult with whom the child will continue to reside in the child's home is likely to make a reasonable effort to monitor the residence and report to DFPS and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence.

C.S.H.B. 253 specifies that, in the court's determination of whether there is an immediate danger to the physical health or safety of a child, the court is required also to determine whether the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare and that there is no time for a full adversary hearing. The bill requires, rather than authorizes, a court, in making that determination, to consider whether the child's household includes a person who has abused or neglected another child in a manner that caused serious injury to or the death of the other child or who has sexually abused another child. The bill prohibits DFPS from allowing a person entitled to possession of a child to reside with the child while the child is in an out-of-home placement, if DFPS takes possession of the child, unless the person is a minor at the time the child is removed; the person and child are placed together with a residential child-care provider regulated under state law that provides a program specifically designed to address the issues that led to the removal of the child from the person; or the court has ordered DFPS to allow the person to reside with the child.

C.S.H.B. 253 amends the Health and Safety Code to enhance the penalty from a Class C misdemeanor to a Class A misdemeanor for an offense of failing to perform a duty relating to filing a birth certificate or report of birth as required by law.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 253 omits a provision included in the original amending the Education Code to expand the powers and duties of certain attendance officers to include making a home visit or otherwise contacting the parent of a student who is the subject of an investigation of a report of child abuse or neglect and who is in violation of compulsory school attendance requirements. The substitute omits provisions included in the original prohibiting a peace officer who is serving as an attendance officer from entering a residence without the effective consent of the student, the parent of the student, or the owner or tenant of the residence except to serve court-ordered legal process on the parent or to execute a search warrant and prohibiting an attendance officer who is not a peace officer from entering a residence without such consent except to accompany a peace officer who is executing a search warrant. The substitute omits a provision included in the original defining "effective consent."

C.S.H.B. 253 omits a provision included in the original changing from a notice explaining a district's or open-enrollment charter school's attendance policy to a notice regarding the number of a student's unexcused absences from school the issuance of which, in part, constitutes an offense of a parent contributing to nonattendance of a student. The substitute omits a provision included in the original increasing the penalty from a Class C misdemeanor to a Class A misdemeanor for an offense of a parent contributing to nonattendance and enhancing the penalty to a third degree felony for a subsequent offense. The substitute omits a provision included in the original making a parent who refuses to obey a court order relating to a parent contributing to nonattendance subject to a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both. The substitute omits a provision included in the original increasing the penalty from a Class C misdemeanor to a Class B misdemeanor for an offense of failure to attend school.

C.S.H.B. 253 omits a provision included in the original adding to the conditions that result in enhancement of the penalty for an offense of failing to report child abuse or neglect a showing on the trial of the offense that the person committing the offense is a professional as defined by specified provisions of law.

C.S.H.B. 253 differs from the original by prohibiting the Department of Family and Protective

Services (DFPS) from allowing a person entitled to possession of a child to reside with the child while the child is in an out-of-home placement if DFPS takes possession of the child, except in certain circumstances, whereas the original prohibits DFPS from allowing an adult entitled to possession of a child to accompany or remain with the child after the child is in the department's custody if DFPS takes possession of the child by removing the child from the adult.

C.S.H.B. 253 differs from the original by enhancing the penalty for an offense of bigamy to a second degree felony if the person whom the actor marries or purports to marry or with whom the actor lives under the appearance of being married is 17 years of age and to a first degree felony if such a person is 16 years of age or younger and omitting a provision included in the original enhancing the penalty for an offense of bigamy from a third degree felony to a second degree felony if the actor is 17 years of age or younger and to a first degree felony if the actor is 18 years of age or older and it is shown on trial that at the time of the commission of the offense the person whom the actor marries or purports to marry or with whom the actor lives under the appearance of being married is 17 years of age or younger. The substitute omits a provision included in the original making related conforming changes.

C.S.H.B. 253 omits procedural provisions included in the original relating to the applicability of certain Education Code and Family Code provisions amended by the original and omitted by the substitute. The substitute omits a procedural provision included in the original relating to the applicability of a specified provision of the Health and Safety Code as amended by the original.