

## **BILL ANALYSIS**

C.S.H.B. 3123  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that certain federal laws relating to the notification of adult relatives following the removal of a child from a home were recently changed. The parties further note that, in order to minimize the amount of time a child spends in foster care and to prioritize the best interests of a child, state law needs to be changed to comply with federal law and to ensure that, at the beginning of certain suits affecting the parent-child relationship, all adult family members are identified, are notified of the removal, and are involved in the process to the greatest extent possible. C.S.H.B. 3123 seeks to make changes relating to codifying federal foster care funding requirements.

### **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. 3123 amends the Family Code to require the Department of Family and Protective Services (DFPS), when DFPS or another agency takes possession of a child under provisions of law relating to such an action in a suit by a governmental entity to protect the health and safety of a child, to give written notice as prescribed by the bill's provisions to each adult DFPS is able to identify and locate who is related or is alleged to be related to the child within the third degree by consanguinity or affinity; is identified as a potential relative or designated caregiver, as defined in certain provisions of law relating to child welfare services, on the proposed child placement resources form provided under provisions of law relating to an investigation of a report of child abuse or neglect; or has a long-standing and significant relationship with the child. The bill requires the written notice to include a statement that the child has been removed from the child's home and is in the temporary managing conservatorship of DFPS; an explanation of the options available to the individual to participate in the care and placement of the child and the support of the child's family; a statement that some options available to the individual may be lost if the individual fails to respond to the notice in a timely manner; and the date and time set for a hearing to review the child's status and the service plan developed for the child.

C.S.H.B. 3123 specifies that DFPS is not required to provide notice under the bill's provisions to an individual who has received service of citation under provisions of law relating to a suit affecting the parent-child relationship or who DFPS determines has a history of family violence that makes notification inappropriate. The bill requires DFPS to conduct an investigation to identify and locate all individuals entitled to notice under the bill's provisions and to complete the investigation not later than the 30th day after the date the child is taken into possession. The bill requires DFPS to use due diligence in conducting the investigation, including interviewing each individual DFPS identifies and locates and interviewing the child, in an age-appropriate manner, about adults who may have a long-standing and significant relationship with the child.

C.S.H.B. 3123 requires DFPS, not later than the 10th day before the date set for a status hearing, to file with the court an affidavit stating the efforts DFPS made to identify, locate, and notify the individuals specified by the bill's provisions and the name of each individual DFPS identified, located, or notified.

C.S.H.B. 3123 requires DFPS or other agency appointed as the managing conservator of a child and the child's parents to jointly develop the service plan under provisions of law relating to the review of the placement of a child under the care of DFPS. The bill requires DFPS or other authorized agency, if DFPS or the agency determines that a child's parent is unable or unwilling to participate in the development of the service plan, to record the lack of participation in the service plan. The bill includes as a condition under which DFPS is authorized to file a plan without the parent's signature, a determination by DFPS or other authorized agency that the child's parents are unable or unwilling to participate in the development of the service plan. The bill authorizes a motion to be filed by any party for a hearing at which the court is required to either accept the plan or modify the plan based on the testimony of the parties, if the child's parents refuse to sign the plan, and removes a provision of law establishing that such a plan takes effect when DFPS or another authorized agency files the plan without the parents' signatures. The bill specifies that the service plan is in effect until amended by agreement of the parties, as an alternative to being in effect until amended by the court.

C.S.H.B. 3123 specifies that the findings required to be made by a court in a status hearing as to whether DFPS or other agency has exercised due diligence to locate all necessary persons includes findings as to whether DFPS or other agency has exercised due diligence to locate an alleged father of the child, regardless of whether the alleged father is registered with the registry of paternity under the Uniform Parentage Act. The bill requires a court to make findings in a status hearing as to whether the child, in addition to each custodial parent, alleged father, or relative of the child, has furnished to DFPS all information necessary to locate another absent parent, alleged father, or relative of the child through exercise of due diligence. The bill removes provisions requiring a status hearing to be limited to matters related to the contents and execution of the service plan filed with the court, with certain exceptions. The bill includes among the findings required to be made by a court on the review of a service plan for reasonableness, accuracy, and compliance with requirements of court orders findings as to whether a service plan is reasonably tailored to address any specific issues identified by DFPS or other agency and whether the child's parents and the representative of DFPS or other agency have signed the plan. The bill removes a provision of law requiring such findings to include findings as to whether the child's parents have been advised of the possibility of the restriction or termination of the parent's parental and custodial duties and rights or the possibility of the child not being returned to the parents unless the parents are willing and able to provide the child with a safe environment within a specified period of time.

C.S.H.B. 3123 requires the court to review the affidavit filed by DFPS under the bill's provisions and inquire into the sufficiency of the department's efforts to identify, locate, and notify each adult specified by the bill. The bill requires the court to order DFPS to make further efforts to identify, locate, and notify each such adult if the court determines that department's efforts have not been sufficient. The bill requires the court to give the child's parents an opportunity to comment on the service plan. The bill requires the court, if a proposed child placement resources form has not been submitted, to require each custodial parent, alleged father, or relative of the child to submit such a form.

C.S.H.B. 3123 requires the court to advise the parties in a status hearing of the provisions regarding the mandatory appointment of an attorney ad litem under provisions of law relating to special appointments and social studies in suits affecting the parent-child relationship and to appoint an attorney ad litem to represent the interests of any person eligible if the appointment is required by such provisions of law. The bill requires the court to advise the parties that progress under the service plan will be reviewed at all subsequent hearings, including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the plan.

C.S.H.B. 3123 repeals Section 263.104, Family Code, relating to an amended service plan, and Sections 263.202(c) and (d), Family Code, relating to notification by a court of the review of a service plan at subsequent status hearings and a court's consideration to waive a service plan under certain circumstances.

#### **EFFECTIVE DATE**

September 1, 2011.

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

C.S.H.B. 3123 differs from the original by requiring the Department of Family and Protective Services (DFPS) to give written notice to certain persons identified by the bill when DFPS or another agency takes possession of a child under provisions of law relating to such an action in a suit by a governmental entity to protect the health and safety of a child, whereas the original requires DFPS, if a child is removed from home, to exercise due diligence to identify and provide information to certain persons. The substitute differs from the original by requiring DFPS to conduct an investigation to identify and locate those specified persons and to complete the investigation not later than the 30th day after the date the child is taken into possession, whereas the original requires DFPS to exercise due diligence to identify and provide information to those persons within 30 days of the removal of the child from home.

C.S.H.B. 3123 differs from the original by omitting a specification included in the original including among the persons required to be identified by DFPS the adult relatives of the alleged father of a child that DFPS determined is the most likely to be the biological father, a person having legal custody of the child, an alleged father, or relative. The substitute differs from the original by including among such persons required to be identified by DFPS an adult who has a long-standing and significant relationship with the child, whereas the original includes among such persons, at the discretion of DFPS, any other adult relatives or adult persons with a longstanding and significant relationship with the child that DFPS has determined to be a possible appropriate placement for the child.

C.S.H.B. 3123 differs from the original, in a bill provision requiring DFPS to take certain actions to identify and locate specified persons for purposes of providing those persons with notice, by including among those actions interviewing each individual DFPS identifies and locates and interviewing the child in an age-appropriate manner about adults who may have a long-standing and significant relationship with the child, whereas the original includes among those actions seeking information from the parent or parents, alleged father, relatives who have been located, and the child, in an age-appropriate manner. The substitute omits a provision included in the original establishing that a parent or alleged father's failure to complete a child placement resources form does not satisfy DFPS' duty to seek information from the parent for purposes of identifying and locating specified persons for purposes of providing those persons with certain information.

C.S.H.B. 3123 differs from the original, in a bill provision establishing the information required to be given to certain persons by DFPS, by including in the statement that the child has been removed from the child's home a statement specifying that the child is in the temporary managing conservatorship of DFPS and by specifying, in the statement that options to participate in the care of the child and support of the family may be lost if the individual fails to respond to the notice, that such options may be lost if the individual fails to respond in a timely manner, whereas the original does not include such specifications. The substitute differs from the original by requiring the information required to be given to certain persons by DFPS to include the date and time set for a status hearing to review the child's status and the service plan developed for the child, whereas the original requires such information to include the date, time, and location of the status hearing, if one has been set, invites the person's participation in the case, and

requires DFPS to subsequently provide such information to those certain persons, if the status hearing has not been set.

C.S.H.B. 3123 differs from the original by establishing that DFPS is not required to provide notice to an individual who DFPS determines has a history of family violence that makes notification inappropriate, whereas the original establishes that DFPS is not required to provide required information to a person if the person has a history of family or domestic violence or a criminal history that makes participation in the service plan inappropriate.

C.S.H.B. 3123 differs from the original by requiring DFPS, not later than the 10th day before the date set for a status hearing, to file with the court an affidavit stating certain information relating to identification, location, and notification of certain persons, whereas the original requires DFPS, before the status hearing, to file a report with the court stating certain information relating to the location and provision of required information to specified persons. The substitute differs from the original by omitting language included in the original requiring such a report to state efforts made to locate an alleged father of the child, regardless of whether that alleged father has registered with the registry of paternity under the Uniform Parentage Act.

C.S.H.B. 3123 omits a provision included in the original requiring the report to state any reason for not locating or providing information to a person who has not been located or provided that information. The substitute omits a provision included in the original requiring the court to review the report required to be filed by DFPS before the status hearing, inquire into the department's diligent efforts, and make orders directing the department to continue efforts to locate certain persons if appropriate.

C.S.H.B. 3123 differs from the original, in a bill provision requiring DFPS or another agency to record the lack of participation in the service plan if the parent is unable or unwilling to participate in the development of the service plan, by making the requirement contingent on the department's or agency's determination that the parent is unable or unwilling to participate, whereas the original contains no such condition.

C.S.H.B. 3123 differs from the original by authorizing a motion to be filed by any party for a hearing at which the court is required to either accept or modify a service plan, if the child's parents refuse to sign the plan, whereas the original specifies that the plan takes effect when the court issues an order giving the plan effect without the parents' signatures. The substitute differs from the original by requiring the court to give a child's parents an opportunity to comment on the service plan, whereas the original requires the court to give the parent or parents an opportunity to express any concerns relating to the plan.

C.S.H.B. 3123 differs from the original by specifying that the requirement for the court to require certain persons to submit a proposed child placement resources form if such a form has not been submitted applies to each custodial parent of the child, whereas the original does not include that specification.

C.S.H.B. 3123 differs from the original by requiring the court to advise the parties in a status hearing of the provisions regarding the mandatory appointment of an attorney ad litem and to appoint an attorney ad litem to represent the interests of any person eligible if such appointment is required, whereas the original requires the court to advise a person eligible for an appointed attorney ad litem who has not received an appointed attorney or hired counsel of the right to court-appointed counsel if the requirements of applicable provisions of law are met.

C.S.H.B. 3123 omits a provision included in the original requiring the court to inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent or parents are willing and able to provide the child with a safe environment.

C.S.H.B. 3123 contains a saving provision not included in the original. The substitute differs from the original in nonsubstantive and conforming ways.