

BILL ANALYSIS

Senate Research Center

S.B. 44
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Health & Human Services
7/3/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of S.B. 44 is to exempt from Texas's abuse and neglect registry parents whose sole purpose for relinquishment of their parental rights is to obtain mental health services for their child. Additionally, if a parent's name was previously and/or wrongfully added to the "refused to accept parental responsibility" list, parents will also have the right to petition the family court that held the custody hearing to have their name removed from the registry if the only reason the Department of Family and Protective Services (DFPS) took custody was to obtain mental health services for the child.

Parents of children with severe behavioral or mental disorders face a high financial burden in securing the necessary medical care for their child. Although Medicaid waiver programs cover mental and behavioral health services for children with disabilities, some private insurers only cover mental health services if the child is determined to be homicidal or suicidal or they may limit coverage of care. In these cases, parents without adequate health insurance or financial means may face the last resort decision to place their child in the custody of Child Protective Services (CPS) in order to obtain the mental health services or treatment the child needs. In doing so, parents are deemed as having refused to accept parental responsibility and are placed on Texas's abuse and neglect registry.

DFPS can use the information in this registry to perform background checks and is required to provide this information with local child services agencies, hospitals, clinics, schools, and other states. This means that persons entered into the registry may be barred from employment in any of these sectors, especially those jobs requiring contact with children.

Parents who have given up custody of their children to CPS for the sole reason of gaining better behavioral or mental health services for their children do not pose a present or future threat to the safety of children and should not be entered into the abuse and neglect registry. Entry into the registry not only unnecessarily labels these parents as threats to their children's safety, but also bars them from seeking employment in hospitals, clinics, schools, and any sector requiring contact with children. This higher barrier to employment exacerbates the financial condition that forced the parent to give up custody of their child.

Placing a child in the conservatorship of the state where a parent may have to relinquish custody is not only traumatic for the child and family, but costly for the state in terms of on-going child welfare case supervision and court procedures. Mental health authorities have the expertise needed to assess children with serious emotional disturbances and identify the supports and services they need, while CPS caseworkers typically do not have this expertise.

S.B. 44 amends current law relating to maintaining and reporting certain information regarding certain child abuse or neglect cases and the provision of mental health services for children in those cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.001, Family Code, by adding Subdivision (9), to define "severe emotional disturbance."

SECTION 2. Amends Section 261.004(b), Family Code, to require the Department of Family and Protective Services (DFPS) to report certain information, including reporting the number of children who suffer from a severe emotional disturbance and for whom DFPS is appointed managing conservator because a person voluntarily relinquished custody of a child solely to obtain mental health services for the child.

SECTION 3. Amends Chapter 262, Family Code, by adding Subchapter E, as follows:

SUBCHAPTER E. RELINQUISHING CHILD TO OBTAIN CERTAIN SERVICES

Sec. 262.351. DEFINITIONS. Defines "department" and "severe emotional disturbance" in this subchapter.

Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD. Requires DFPS, before a person relinquishes custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, if it is in the best interest of the child, to discuss with the person relinquishing custody of the child the option of seeking a court order for joint managing conservatorship of the child with DFPS.

Sec. 262.353. STUDY TO DEVELOP ALTERNATIVES TO RELINQUISHMENT OF CUSTODY TO OBTAIN MENTAL HEALTH SERVICES. (a) Requires DFPS and the Department of State Health Services (DSHS) to jointly study and develop recommendations to prevent the practice of parents relinquishing custody of children with a severe emotional disturbance and placement of children in the conservatorship of DFPS solely to obtain mental health services for the child.

(b) Requires DFPS and DSHS, as part of the study under Subsection (a), to consider the advantages of providing mental health services using temporary residential treatment and intensive community-based services options, including:

- (1) joint managing conservatorship of the child by DFPS and the child's parent;
- (2) the Youth Empowerment Services waiver program;
- (3) systems of care services;
- (4) emergency respite services; and
- (5) diversion residential treatment center services.

(c) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to review the recommendations developed under Subsection (a) and authorizes the executive commissioner to direct the implementation of any recommendation that can be implemented with DFPS's current resources.

(d) Requires DFPS and DSHS, not later than September 30, 2014, to file a report with the legislature and the Council on Children and Families (council) on the results of the study required by Subsection (a). Requires that the report include:

- (1) each option to prevent relinquishment of parental custody that was considered during the study;

- (2) each option recommended for implementation, if any;
 - (3) each option that is implemented using existing resources;
 - (4) any policy or statutory change needed to implement a recommended option;
 - (5) the fiscal impact of implementing each option, if any;
 - (6) the estimated number of children and families that may be affected by the implementation of each option; and
 - (7) any other significant information relating to the study.
- (e) Requires DFPS and DSHS, not later than September 30 of each even-numbered year after the date the initial report is filed under Subsection (d), to update the report. Requires that the updated report include the implementation status of each recommended option under Subsection (d).

SECTION 4. Amends Section 531.803, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

- (a) Requires the council to, among other requirements, identify and develop methods and strategies to coordinate and enhance prevention services for children and their families and develop methods to prevent unnecessary parental relinquishment of custody of children and make recommendations to the executive commissioner regarding options for improving the system for serving families who relinquish, or are at risk of relinquishing, custody of a child solely to obtain mental health services for the child, after considering whether it would be appropriate to serve those families without a finding of abuse or neglect or without including the finding of abuse or neglect in the central registry of reported cases of child abuse or neglect. Makes nonsubstantive changes.
- (a-1) Requires the executive commissioner to review the council's recommendations under Subsection (a)(6) (relating to requiring the council to develop methods to prevent unnecessary parental relinquishment of custody of children and make recommendations to the executive commissioner regarding options for improving the system for serving families who relinquish, or are at risk of relinquishing, custody of a child solely to obtain mental health services for the child, under certain conditions) and direct the implementation of any policy changes the executive commissioner determines necessary that can be implemented using existing resources.

SECTION 5. Effective date: September 1, 2013.