

BILL ANALYSIS

C.S.H.B. 2308
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The removal of a child from an abusive or neglectful home is an intensely traumatic event. While state law allows for parent and caregiver removal by court order, many parents and caregivers may be willing to voluntarily choose to have themselves removed in order to keep the child in the home in efforts to mitigate trauma to the child. There have been calls to provide a mechanism in family law through which an agreement may be made to prioritize the child's needs in these situations. C.S.H.B. 2308 seeks to address this issue by providing a parent or caregiver who is accused of abuse or neglect the option to voluntarily remove themselves from the home in lieu of the child's removal.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 2308 amends the Family Code to authorize an alleged perpetrator of child abuse or neglect to agree in writing to an order, subject to a court's approval, requiring the alleged perpetrator to leave the applicable child's residence. The bill sets out the required contents of the order and establishes that an order is civilly or criminally enforceable but is not enforceable as a contract. The bill prohibits an order from being used against an alleged perpetrator as an admission of child abuse or neglect. The bill authorizes a person affected by an order to request the court to terminate the order and requires the court to do so upon finding the order is no longer needed.

C.S.H.B. 2308 includes the following facts and findings among those sufficient to satisfy a person or a court, as applicable, before proceeding in certain suits affecting the parent-child relationship filed by the Department of Family and Protective Services (DFPS):

- the fact or finding that a child would not be adequately protected in the child's home with an order for removal of the alleged perpetrator or a protective order; and
- the fact or finding that placing the child with a caregiver under a parental child safety placement agreement met the following conditions:
 - the placement was offered but refused;
 - the placement was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or

- the placement would pose an immediate danger to the child's physical health or safety of the child.

The bill makes these facts and findings sufficient to satisfy a person or a court, as applicable, before proceeding with the following suits and actions:

- an original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing;
- an original suit filed by a governmental entity after taking possession of a child in an emergency without a court order;
- a court's issuance of a temporary order for the conservatorship of a child or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity; and
- a court's requirement to order a child's return at the initial hearing regarding a child taken in possession without a court order by a governmental entity.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2308 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes as a fact or finding sufficient to satisfy a person or a court, as applicable, before proceeding in certain suits affecting the parent-child relationship, which was absent from the original, the fact or finding that placing a child with a caregiver under a parental child safety placement agreement was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation.

The substitute does not include a provision present in the original replacing the authorization for DFPS to place a child with a designated caregiver identified on the proposed child placement resources form with a requirement to do so. The substitute does not include a specification present in the original that such a placement must occur as long as the placement is safe and available and not later than 48 hours after taking possession of the child.