

## **BILL ANALYSIS**

C.S.H.B. 3041  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Department of Family and Protective Services is tasked with protecting children in Texas from mistreatment and neglect and must often implement this consequential mission by removing children from homes deemed to be unsafe. Increasingly, however, children are removed from their homes due to purported safety concerns or allegations of neglect that, all too frequently, are the by-products of poverty rather than acts of malicious parents or guardians. Research has shown that children suffer additional trauma when they are removed from their homes and placed in foster care, even if only for a short time. The federal Family First Prevention Services Act, which became law in 2018, has for the first time made it possible for the State of Texas to access federal Title IV-E funding to pay a portion of the services that will help children stay in their homes and that will address safety factors, such as drug abuse, that would otherwise lead to charges of neglect or mistreatment and removal from the home. C.S.H.B. 3041 seeks to prevent children from needlessly entering into the foster care system by establishing a pilot program to provide matching federal dollars to help provide evidence-based prevention services, including mental health services, substance abuse treatment, and in-home intensive parenting support, for adults whose children are at imminent risk of entering foster care.

### **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. 3041 amends the Family Code to provide, among other related provisions, for the establishment of a family preservation services pilot program to serve as an alternative to the removal of a child in suits affecting the parent-child relationship.

#### **Pilot Program**

##### **Program Implementation**

C.S.H.B. 3041 requires the Department of Family and Protective Services (DFPS) to establish a pilot program that allows DFPS to dispose of an investigation of a child who is a candidate for foster care by referring the child's family for family preservation services and allowing the child to return home instead of entering foster care or by providing services to a child who is pregnant or is a parent.

C.S.H.B. 3041 requires DFPS to implement the program in two child protective service regions, one urban and one rural, at least one of which is a region in which community-based care has been implemented.

C.S.H.B. 3041 provides that, in implementing the program, DFPS must establish a process to use Title IV-E funds to provide legal representation to families and TANF funds to provide enhanced in-home support services to families qualifying for prevention services.

C.S.H.B. 3041 specifies that, for purposes of the pilot program, a child who is a candidate for foster care means a child who is at imminent risk of being removed from the child's home and placed into DFPS conservatorship because of a continuing danger to the child's physical health or safety caused by an act or failure to act of a person entitled to possession of the child but for whom a court of competent jurisdiction has issued an order allowing the child to remain safely in the child's home or in a kinship placement with the provision of family preservation services.

### Family Preservation Services

C.S.H.B. 3041 defines "family preservation service" as a time-limited, family-focused service provided to the family of a child who is a candidate for foster care or a child who is pregnant or is a parent to prevent or eliminate the need to remove the child and allow the child to remain safely with the child's family, including a service subject to the federal Family First Prevention Services Act. The bill establishes that, in authorizing these services, the child's safety is the program's primary concern and that the services may be modified as necessary to accommodate the child's circumstances.

### Court Proceedings

C.S.H.B. 3041 requires DFPS to obtain a court order from a court of competent jurisdiction to compel an applicable family or a child to obtain family preservation services and complete a family preservation services plan.

### *Filing Suit*

C.S.H.B. 3041 authorizes DFPS to file a suit requesting the court to render an order requiring the parent, managing conservator, guardian, or other member of the child's household to do the following:

- participate in the family preservation services for which DFPS makes a referral or services DFPS provides or purchases to do one of the following:
  - alleviate the effects of the abuse or neglect that has occurred; or
  - reduce a continuing danger to the physical health or safety of the child or a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household;
- permit the child and any of the child's siblings to receive the services; and
- complete all actions and services required under the applicable family preservation services plan.

The bill sets out provisions relating to the administration of the suit, establishes certain petition requirements, and authorizes a court to render a temporary restraining order as provided by law.

### *Ad Litem Appointments*

C.S.H.B. 3041 requires the court to do the following before the applicable hearing:

- appoint attorneys ad litem to represent the child's and parent's interests, respectively, immediately after the suit is filed, with both attorneys ad litem having the respective powers and duties of an attorney ad litem for a child or parent under provisions governing court-ordered representation in suits affecting the parent-child relationship; and

- inform each parent of the parent's right to be represented by an attorney and, for a parent who is indigent and appears in opposition to the motion, the parent's right to a court-appointed attorney.

The bill sets out provisions relating to the manner in which a claim of indigence is asserted and addressed, including provisions authorizing the postponement of any subsequent proceedings after an attorney ad litem is discharged, on a finding that the parent is not indigent, to allow the parent to hire an attorney or to provide the parent's attorney time to prepare for the subsequent proceedings.

### *Court Order*

C.S.H.B. 3041 requires the court, at the conclusion of the hearing, to order DFPS to provide family preservation services and to execute a family preservation services plan developed in collaboration with the family or a child, as applicable, if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution of the following:

- abuse or neglect occurred or there is a substantial risk of abuse or neglect or continuing danger to the child's physical health or safety caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household;
- family preservation services are necessary to ensure the child's physical health or safety; and
- family preservation services are appropriate based on the child's safety risk assessment and the child's family assessment.

The bill sets out requirements for the contents of the court order.

C.S.H.B. 3041 provides the following:

- the court may, in its discretion, order family preservation services for a parent whose parental rights to another child were previously terminated and may, on a finding by clear and convincing evidence that the parent has subjected the child to certain aggravated circumstances, order that the services not be provided; and
- if a court order for services includes services that are not subject to the federal Family First Prevention Services Act, the order must identify a method of financing for the services and the local jurisdiction that will pay for the services.

### Family Preservation Services Plan

C.S.H.B. 3041 requires DFPS, on order of the court and in consultation with the child's family, to develop a family preservation services plan. The bill sets out requirements for the contents of the plan and requires the family or the child, as applicable, and DFPS to sign the plan.

C.S.H.B. 3041 requires DFPS to submit a copy of the signed plan to the court for review, but DFPS may submit the plan to the court without the parents' signatures if the family is unwilling to participate in the development of the plan.

C.S.H.B. 3041 sets out provisions regarding the effective date of an original or amended plan and establishing a plan's duration. A person subject to the plan may file a motion with the court to request a modification or revocation of the plan or any amended plan. The bill sets out procedures for amending the plan and requires the court, after reviewing and certifying an original or amended plan, to incorporate the plan into the court's order.

C.S.H.B. 3041 authorizes a court to render additional appropriate orders to implement or require compliance with an original or amended plan. The bill authorizes the court, in rendering an order, to omit any service prescribed under the plan that the court finds is not appropriate or is not narrowly tailored to address the factors that make the child a candidate for foster care and place the child at risk of removal or address the needs of a child who is pregnant or is a parent, as applicable.

### Selection of Service Provider

C.S.H.B. 3041 authorizes a parent, managing conservator, guardian, or other member of a household ordered to participate in family preservation services under the bill's provisions to select any qualified or licensed provider from which to obtain those services. The bill provides the following:

- the services provided must be similar in scope and duration to services described by the adopted family preservation services plan and achieve the stated goals of the service plan;
- the service provider must certify in writing that the person completed the services;
- the person obtaining the services is responsible for the cost of the services;
- the person must obtain verification from the provider of completion; and
- DFPS must accept the verification as proof of completion.

### Contract for Services

C.S.H.B. 3041 authorizes DFPS to contract with one or more persons to provide family preservation services under the pilot program. In a child protective services region in which community-based care has been implemented and in which the program is implemented, DFPS may contract with the applicable single source continuum contractor to provide the services.

C.S.H.B. 3041 sets out requirements for the contract with the selected service provider, including certain performance-based measures. In addition, DFPS must collaborate with the provider to, as follows:

- identify children who are candidates for foster care or who are pregnant or are parents; and
- ensure that the services are appropriate for children referred by DFPS.

### Status Hearing

C.S.H.B. 3041 requires the court, not later than the 90th day after the date the court renders an order for family preservation services, to hold a hearing to review the status of each person required to participate in the services and of the child and to review the services provided, purchased, or rendered. The court must set subsequent review hearings every 90 days to review the continued need for the order.

### Extension and Expiration of Order

C.S.H.B. 3041 authorizes the court to extend an order for family preservation services on a showing by DFPS of a continuing need for the order, after notice and hearing. The court may extend the order only one time for not more than 180 days but, as follows, the court may extend an order for not more than an additional 180 days only if:

- the extension is requested by the person required to participate in the services under the family preservation services plan or the person's attorney; and
- the court makes certain findings, including that the extension is necessary for a person to complete the services and that the completion of the services is necessary to ensure the child's physical health and safety.

The bill requires the court to dismiss the case on expiration of the court order for services.

### Legislative Report

C.S.H.B. 3041 requires DFPS, not later than the first anniversary of the date the pilot program commences and every two years thereafter, to contract with an entity based in Texas that is independent of DFPS and has certain demonstrated, applicable expertise to evaluate the implementation of the program, assess its progress, and report its findings to the appropriate standing committees of the legislature. The bill sets out the required contents of the report, which

include information regarding costs, certain data on performance-based outcomes, and other detailed analyses. The report must include recommendations on whether to expand services to other child protective services regions based on the outcomes and performance of the program.

### **Other Provisions**

C.S.H.B. 3041 replaces a specification that the service plan filed by DFPS after a court renders a temporary order appointing DFPS as temporary managing conservator of a child be reasonably tailored to address any specific issues identified by DFPS with a specification that the plan be narrowly tailored to address those identified issues.

C.S.H.B. 3041 provides the following with respect to a parent, managing conservator, guardian, or other member of an abused or neglected child's household ordered by DFPS to participate in certain services provided or purchased by DFPS:

- the person may obtain those services from any qualified provider they select;
- the person is responsible for the costs of the services; and
- the person must obtain verification from the service provider of completion of the services, if applicable, and DFPS must accept that verification as proof of completion.

### **EFFECTIVE DATE**

September 1, 2021.

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

While C.S.H.B. 3041 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 does the following with respect to the pilot program:

- expands the program to include a child who is pregnant or is a parent and makes other changes, as applicable, to reflect that inclusion;
- revises the original's definition of "family preservation service" to include all applicable time-limited, family-focused services, including services subject to the federal Family First Prevention Services Act, rather than only a time-limited service subject to that act as in the original;
- in a provision not included in the original, requires DFPS, in implementing the program, to establish a process to use Title IV-E funds to provide legal representation to families and to use TANF funds to provide enhanced in-home support services to qualifying families;
- specifies that the family preservation services may be modified as necessary to accommodate the child's circumstances but does not include the original's specification that it is the program itself that may be modified for such an accommodation;
- specifies that the court from which DFPS, as required in the original, must obtain a court order to compel participation and completion of family preservation services is a court of competent jurisdiction;
- changes the evidentiary standard provided by the original for a court to issue such an order from a standard based on a preponderance of the evidence that applicable conditions exist for such an order to a standard based on there being sufficient evidence to satisfy a person of ordinary prudence and caution that those applicable conditions exist;
- clarifies that the service provider selected by the person ordered to participate in family preservation services may be a qualified or licensed provider instead of being a qualified provider only, as limited in the original;
- includes provisions not included in the original, as follows:

- requiring the services provided to be similar in scope and duration to services described by the applicable family preservation services plan; and
  - requiring the provider to certify the completion of the services;
- replaces the requirement in the original for DFPS to report to the applicable legislative committees on the progress of the program with a requirement for DFPS instead to contract with an applicable entity independent of DFPS to evaluate the implementation of the program, assess its progress, and report its findings to the applicable committees;
- expands the original's required contents of the requisite report to include a detailed analysis of the role certain entities have in the program and an analysis of any barrier to the successful implementation of the program and recommendations for overcoming those barriers; and
- includes a provision, not in the original, requiring the original's performance-based outcomes used for evaluating the program for the report to include specified measures.