

BILL ANALYSIS

C.S.H.B. 730
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Over the years, it has become evident that there is a lack of knowledge surrounding the rights of a parent or caregiver under Department of Family and Protective Services (DFPS) investigation. There is also a lack of accountability that prevents DFPS from conducting investigations with greater diligence. C.S.H.B. 730 seeks to revise some of the practices that occur in the time between DFPS's initial encounter with a family and the removal of a child by adding required notifications of parent or caretaker rights, fixing investigation standards, revising ex parte hearing stipulations, and putting in place accountability measures to ensure the greatest level of transparency and diligence is afforded to families under investigation. This legislation aims to fix the hidden foster care system.

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. 730 amends the Family Code to require, before an applicable order is issued, a showing of probable cause that the following court orders are necessary to protect the child from abuse or neglect:

- a court order requiring a parent, the person responsible for the care of a child, or the person in charge of any place where the child may be to allow entrance for an interview, examination, or investigation; and
- a court order requiring the release of the child's prior medical, psychological, or psychiatric records or requiring a medical, psychological, or psychiatric examination of the child that is requested by the Department of Family and Protective Services (DFPS).

This showing of probable cause replaces good cause shown as the statutory standard triggering the requirement for issuance of such orders. A hearing for an order may not be ex parte unless the court has probable cause to believe there is no time, consistent with the physical health or safety of the child, for a full hearing. The bill requires a court order to include the court's findings regarding the sufficiency of evidence supporting the order and requires the court to provide a copy, on request of a party to the suit, to the party.

C.S.H.B. 730 changes the provision applicable to a child protection suit requiring DFPS to provide a child's parent or legal custodian with certain written information relating to investigation procedure and child placement resources as soon as possible after initiating an investigation of the parent or custodian. The bill specifies that the provision of that information

must occur instead upon first contact with that parent or with the alleged perpetrator. The bill requires the information to include the following:

- an explanation that any statement or admission made by the person to anyone may be used against the person in a criminal case, as a basis to remove the child who is the subject of the investigation or any other child from the person's care, custody, and control either temporarily or permanently, or as a basis to terminate the person's relationship with the child or any other child;
- the known allegations the department is investigating; and
- verbal notification of and a written summary of the rights to, as follows:
 - not speak with any DFPS agent without legal counsel present;
 - assistance by an attorney;
 - have a court-appointed attorney if the person is indigent, the person is the parent of the child, and DFPS seeks a certain court order;
 - record any interaction or interview subject to the understanding that the recording may be disclosed to DFPS, law enforcement, or another party under a court order;
 - refuse to allow the investigator to enter the home or interview the child without legal counsel present or without a court order;
 - withhold consent to the release of any medical or mental health records;
 - withhold consent to any medical or psychological examination of the child;
 - refuse to submit to a drug test; and
 - consult with legal counsel prior to agreeing to any proposed voluntary safety plan.

C.S.H.B. 730 requires the DFPS investigator to document that the investigator provided the verbal notification and requires DFPS to adopt a form for the purpose of verifying that the parent or legal custodian received the verbal notification and written summary. The bill requires DFPS to provide a true and correct copy of the signed form to the person who is the subject of the investigation or that person's attorney, if represented by an attorney. The bill establishes that if a person who is the subject of an investigation does not receive the verbal notification and written summary, any information obtained from the person, and any other information that would not have been discovered without that information, is not admissible for use against the person in any civil proceeding.

C.S.H.B. 730 requires a court that holds an ex parte hearing for a child protection suit to prepare and keep a record of the hearing in the form of an audio or video recording or a court reporter transcription. A copy of the record must be made available by the court to a party on request of a party to the suit. The bill requires DFPS to provide notice of an ex parte hearing if DFPS has received notice that a parent who is a party is represented by an attorney.

C.S.H.B. 730 prohibits the court, in a suit for a temporary order to require the child's parent, managing conservator, guardian, or another member of the child's household to participate in certain child and family services, from issuing an order that places the child outside of the child's home or in DFPS conservatorship. The bill requires DFPS to report the number of cases in which a court orders any such person with respect to a child who is placed with a caregiver under a child safety placement to participate in services.

C.S.H.B. 730, with respect to a parental child safety placement agreement, provides the following:

- before a parent or other person making a parental child safety placement and the caregiver enter into an agreement, DFPS must notify each person of the person's right to consult with an attorney and must provide that person with a reasonable time in which to do so; and
- the initial agreement automatically terminates on the earlier of the 30th day after:
 - the date the agreement is signed; or
 - the date the child is placed with the caregiver.

On the expiration of a parental child safety placement agreement, DFPS may for good cause enter into not more than two additional parental child safety placement agreements for the child. Moreover, on entering the agreement, DFPS must do the following:

- reevaluate the terms and conditions of the original agreement; and
- notify the parents of the following rights:
 - the right to refuse to enter into the agreement; and
 - the right to be represented by an attorney or a court-appointed attorney if the parent is indigent and if DFPS subsequently seeks a court order to require the parents to participate in services.

The bill automatically terminates an additional parental child safety placement agreement on the 30th day after the agreement is signed. The bill prohibits DFPS from placing a child outside of the child's home under a parental child safety placement for longer than 90 calendar days unless the parental child safety placement agreement, which must include specific language, is signed by both the parent and the parent's attorney or a court otherwise renders an order regarding the placement. Such provisions may not be construed to affect the duration of an agreement between DFPS and the parent other than a parental child safety placement agreement.

C.S.H.B. 730 requires DFPS to include children who are placed with a caregiver under a parental child safety placement agreement in any report, including reports submitted to the U.S. Department of Health and Human Services or another federal agency, in which DFPS is required to report the number of children in the child protective services system who are removed from their homes. In addition, DFPS must report such national report information separately from information regarding the number of children removed under a filed suit.

C.S.H.B. 730 applies only to the following that are rendered, made, held, or executed, respectively, on or after the bill's effective date:

- an order to allow entrance to the home, school, or any place where a child may be for an applicable interview, examination, and investigation and an order for the release of a child's medical, psychological, or psychiatric records or for an examination of the child;
- an investigation of a report of child abuse or neglect;
- an applicable ex parte hearing; and
- a parental child safety placement agreement.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 730 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the provision in the introduced that established the rebuttable presumption in a suit affecting the parent-child relationship that it is in the child's best interest to be raised by the child's parents and that such a presumption must be the court's primary consideration in the suit. The substitute includes a provision not in the introduced that requires a court order in such a suit to include the court's findings regarding the sufficiency of evidence supporting the order and also includes a provision not in the introduced that requires the court to provide a copy of an order rendered to the party on request by the party.

Whereas both the substitute and the introduced require DFPS, after initiating an investigation of a parent or other person having legal custody of the applicable child, upon first contact with the parent or with the alleged perpetrator, to provide a summary of certain information required

under current law and the bill's provisions and a summary of the rights given by verbal notification under the bill's provisions, they differ as follows:

- the substitute clarifies that the summary of the information and the summary of the rights must be a written summary of the information and the rights, but the introduced does not make that clarification;
- the substitute, but not the introduced, provides that, in addition to containing the other information required under current law regarding the description and explanations of certain DFPS procedures for conducting an investigation of alleged child abuse or neglect, the written summary of information must include an explanation that any statement or admission made by the person to anyone may be used against the person in a criminal case as a basis to remove the child who is the subject of the investigation or any other child from the person's care, custody, and control, either temporarily or permanently, or as a basis to terminate the person's relationship with the child who is the subject of the investigation or any other child; and
- the substitute requires the written summary to contain the known allegations DFPS is investigating, but the introduced did not include this requirement.

The substitute and the introduced both require the verbal notification of a person's right to have a court-appointed attorney if the person is indigent, upon first contact with the person after the initiation of an investigation, but the substitute, and not the introduced, requires the notification to notify the person that the right of the indigent person to have a court-appointed attorney is conditioned on the person being the parent of the child and on DFPS seeking a court order to take possession of the child or a court order requiring the person to participate in certain services.

While both the substitute and the introduced provide for the verbal notification upon first contact with an applicable person to include in that verbal notification the person's right to refuse to allow an investigator to enter the home or conduct an interview with the child without legal counsel present, the substitute, but not the introduced, requires the verbal notification to also include notification that the person has the right to refuse entry to the home or interview of the child without a court order.

The substitute includes provisions not in the introduced that do the following:

- require the DFPS investigator to document that the investigator provided the verbal notification;
- require DFPS to provide a true and correct copy of the signed form to the person who is the subject of the investigation or that person's attorney, if represented by an attorney;
- establish that, if a person who is the subject of an investigation does not receive the verbal notification and the written summary, then any information obtained from the person and any other information that would not have been discovered without that information is not admissible for use against the person in any civil proceeding;
- require DFPS to provide notice of an ex parte hearing in a child protection suit if DFPS has received notice that a parent who is a party is represented by an attorney;
- prohibit the court, in a suit for a temporary restraining order to require a child's parent, managing conservator, guardian, or another member of the child's household to participate in certain child and family services and in an order rendered by the court granting an applicable petition, from issuing an order that places the child outside of the child's home or in DFPS conservatorship; and
- require DFPS to report the number of cases in which a court orders any such parent, managing conservator, guardian, or another member of the child's household to participate in certain child and family services.

The substitute does not include the provision in the introduced that authorized DFPS to continue to monitor a child under a parental child safety placement agreement to ensure the child's safety if the parent exercises the right to consult an attorney, and the substitute does not include the related provision in the introduced requiring the agreement to include language stating that the parent waived that right.

Whereas both the substitute and the introduced provide for the automatic termination of a parental child safety placement agreement by the same deadline, the substitute, but not the introduced, clarifies that this applies to an initial parental child safety placement agreement. In addition, while the introduced authorized DFPS, for good cause, to enter into not more than one additional parental child safety placement agreement for the child, the substitute instead authorizes DFPS, for good cause, to enter into not more than two additional agreements. Moreover, the substitute, but not the introduced, does the following:

- specifies that any additional parental child safety placement agreement automatically terminates on the 30th day after the date the agreement is signed;
- prohibits DFPS from placing a child outside the child's home under a parental child safety placement for longer than 90 calendar days unless certain agreements are signed, as specified by the substitute, and expressly prohibits this prohibition from being construed to affect the duration of an agreement between DFPS and the parent other than a parental child safety placement agreement; and
- requires the parental child safety placement agreement to include a prescribed statement regarding the voluntary nature of the agreement, the duration of the agreement, the limitations on a renewal, and the prohibition on placement outside the child's home for longer than a total of 90 calendar days without the applicable signed agreement or a court order applicably rendered.

The substitute and the introduced both provide for the applicability of their provisions regarding their respective revisions to current law regarding a parental child safety placement agreement but those applicability provisions differ as follows:

- the introduced made the bill applicable only to a parental child safety placement agreement executed on or before the bill's effective date; but
- the substitute makes the bill applicable only to such an agreement executed on or after the bill's effective date.

The substitute does not include the applicability provision in the introduced, with respect to certain required inclusions in DFPS's reports of parental child safety placements, that makes the reporting requirements applicable to such placements that are executed on or before the bill's effective date.