

## **BILL ANALYSIS**

C.S.H.B. 4905  
By: Campos  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In Texas, parents can voluntarily terminate their rights to the state under certain circumstances. This is called refusal to assume parental responsibility (RAPR). This can occur with biological parents, but more often post-adoption when parents feel they are unprepared to meet the child's needs. This can happen because many children who have experienced trauma struggle to regulate emotions which leads to acting out, skipping school, or using illegal substances to test boundaries or numb the pain. In other cases, mental health issues are involved, either in the case of the children or their parents, and comes to a head when a child enters a mental hospital or the juvenile justice system and the parents refuse to pick them up.

RAPR cases put the court in a difficult position as no statutorily defined abuse has occurred, but the judge cannot order a parent to take care of a child they don't want. A RAPR case is treated like any other child protective services case, with families receiving services and the state suing for custody. The state is appointed as joint managing conservator, but then those families—even after receiving support services—still continue to refuse responsibility. For those children whose parents refuse services or who fail to reunify after services have been attempted, finding a new adoptive family is difficult and the child can become considered a child without placement.

C.S.H.B. 4905 seeks to establish the conditions that must be satisfied for a court to enter an order of joint managing conservatorship and to further establish that, if a licensed placement cannot be found for the child, the child must be placed with parents until a licensed setting is available or discharge DFPS as the child's joint managing conservator and dismiss the suit.

### **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. 4905 amends the Family Code to require a court to enter an order appointing the Department of Family and Protective Services (DFPS) and the parent or legal guardian of a child who suffers from a severe emotional disturbance as the child's joint managing conservators on finding sufficient evidence to satisfy a person of ordinary prudence and caution that the following statements are true:

- the child's parent or legal guardian has exhausted all reasonable means available to the parent or legal guardian to obtain mental health services to meet the child's needs;
- the child's parent or legal guardian has agreed to actively participate in the child's service

- plan in preparation for the child's return to the parent and legal guardian;
- DFPS is able to provide services necessary to meet the child's mental health needs;
- DFPS has identified an available licensed placement or a relative or other designated caregiver for the child to meet the child's mental health needs; and
- joint managing conservatorship of the child is in the child's best interest.

The bill prohibits a child in the joint managing conservatorship of DFPS and the child's parent or legal guardian from receiving temporary emergency care in a hotel or other unlicensed setting. For this purpose, the bill assigns "hotel" the definition provided in Health and Safety Code provisions governing the use of smoke detectors in hotels.

C.S.H.B. 4905 requires the court, in order to offset the costs of the placement and medical care of a child in DFPS joint managing conservatorship, to order the parent to pay child support and medical support to DFPS in an amount equal to the cost of care, unless the court finds that the parent is indigent. The bill requires the court to take one of the following actions if DFPS is unable to identify an available licensed placement to meet the mental health needs of a child in DFPS joint managing conservatorship:

- order the child to be placed with the child's parent or legal guardian until DFPS identifies an available licensed placement for the child; or
- remove DFPS as the child's joint managing conservator and dismiss the suit affecting the parent-child relationship.

C.S.H.B. 4905 narrows the scope of the provision establishing that the refusal by a person responsible for the care, custody, or welfare of a child with a severe emotional disturbance to permit the child to remain in or return to the child's home resulting in the placement of the child in DFPS conservatorship does not constitute neglect of that child if the refusal is based solely on the person's inability to obtain mental health services necessary to protect the child's safety and well-being after exhausting all available means to obtain those services. The bill makes the exclusion applicable only if the person's refusal results in the placement of the child in joint managing conservatorship as provided by the bill.

#### **EFFECTIVE DATE**

September 1, 2023.

#### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4905 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 introduced contained a provision establishing the conditions for which a court must find sufficient evidence before entering an order for a joint managing conservatorship, including a condition that DFPS has identified an available licensed placement for the child that can meet the child's mental health needs. The substitute expands that condition to include as an alternative to that licensed placement, DFPS identifying a relative or other designated caregiver for the child to meet those needs.

The substitute includes a definition of the term "hotel" that was absent from the introduced.