

BILL ANALYSIS

C.S.S.B. 1853
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current practices at the Department of Family and Protective Services (DFPS) allow children to refuse their placements, which can result in children staying in a hotel monitored by DFPS staff, for example. Moreover, some judges have ordered children into temporary emergency placements despite the availability of a suitable, regulated foster care placement.

Meanwhile, the federal Family First Prevention Services Act provides funding and approval for children at risk of entering foster care to be served by DFPS in the home using evidenced-based services. DFPS engages in these services currently under its "family preservation" stage of service. However, statutory guidance for community-based care (CBC) is not clear that providers may also provide "in-home" family preservation services as an alternative to foster care. Additionally, the current CBC statutes lack clarity on whether CBC providers may offer adoption-related services and extended foster care services.

C.S.S.B. 1853 seeks to address these issues by prohibiting judges from rendering orders that would place a foster child in temporary emergency care when a suitable residential placement is available, by updating the list of case management services CBC providers may offer, and by authorizing CBC providers to develop faith-based partnerships to support children in conservatorship.

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 rulemaking authority is expressly granted to the Department of Family and Protective Service in SECTIONS 3 and 12 of this bill.

ANALYSIS

C.S.S.B. 1853 amends the Family Code to set out and revise provisions relating to certain procedures in a suit affecting the parent-child relationship for a child placed in the conservatorship of the Department of Family and Protective Services (DFPS) and the provision of family preservation services and community-based foster care.

Temporary Emergency Supervision

C.S.S.B. 1853 prohibits DFPS from advocating for, and prohibits a court from rendering, an order placing a child in temporary emergency supervision if a safe and appropriate placement is available with respect to statutory provisions relating to the review of placement of children under care of DFPS. Before a court may order temporary emergency supervision for a child,

DFPS must submit a report to the court that includes information regarding each attempted placement, including the type of placement, the location of the placement, the date DFPS contacted the placement, and the reason DFPS determined the placement was not safe or appropriate. The bill defines "temporary emergency supervision" for these purposes as the supervision and care provided by DFPS for a child without placement for whom DFPS has been appointed as the temporary or permanent managing conservator. These provisions apply to a placement review hearing of a child regardless of the date on which DFPS is named the child's managing conservator.

Family Preservation Services Pilot Program

C.S.S.B. 1853 revises provisions governing the DFPS family preservation services pilot program to do the following:

- expand the services specifically classified as a "family preservation service" to include family-based safety services and services approved under the Title IV-E state plan and to expand the families eligible to receive family preservation services to include the family of a child who is a member of a household that is subject to a temporary order to participate in child and family services as a result of abuse or neglect or the family of a child who is the subject of a monitored return to the parent;
- require DFPS to reimburse a service provider selected by a parent under the program who is not under contract with DFPS in an amount equal to the average cost for the specific service, including any virtual services, from DFPS contractors providing the service in the region where the parent resides;
- require DFPS to adopt rules relating to the manner in which providers are reimbursed for services provided under the program;
- require DFPS to implement provisions relating to the selection and reimbursement of service providers under the program using existing resources; and
- require DFPS to prioritize payments to providers of in-home support services under the enhanced in-home support program.

Community-Based Care; Single Source Continuum Contract Provisions

C.S.S.B. 1853 revises provisions governing the contents of a contract between DFPS and a single source continuum contractor (SSCC) for the SSCC to provide community-based care services in a catchment area as follows:

- requires the contract to include provisions that establish a timeline for implementing family preservation services in the catchment area;
- with respect to the requirement for the contract to allow DFPS to conduct a performance review of the SSCC beginning 18 months after the SSCC has begun providing case management and family reunification support services to all children and families in the catchment area and determine if the SSCC has achieved any performance outcomes specified in the contract:
 - replaces the requirement for the contract to allow DFPS to conduct such a review and make that determination with a requirement for the contract to require DFPS to do so;
 - updates the language establishing when DFPS is to conduct a performance review to reflect the inclusion of family preservation services among the services a SSCC must provide; and
 - requires that DFPS determine the following with respect to a SSCC's performance outcomes:
 - the percentage of children reunified with their families within six months, 12 months, 18 months, and 24 months or later, after the date a suit is filed by DFPS;
 - the percentage of children who reenter DFPS conservatorship within six months, 12 months, or three years after the date the child leaves DFPS conservatorship, disaggregated by case outcome and reason for reentry;

- the percentage of children who remain in DFPS conservatorship until the age of majority, including the percentage of children receiving extended foster care services;
 - the number of placement moves per 1,000 days a child is in substitute care, disaggregated by placement type and the number of days in each placement type;
 - the percentage of families completing family preservation services within three months, six months, nine months, and 12 months, and after 12 months after the date a suit is filed by DFPS, disaggregated by type of service;
 - the percentage of children entering DFPS conservatorship within six months, 12 months, and 24 months of the date the child's family begins receiving family preservation services, including the reason DFPS was granted conservatorship;
 - the percentage of children entering DFPS conservatorship within six months, 12 months, two years, and four years of the date the child's family completes family preservation services, including the reason DFPS was granted conservatorship; and
 - the percentage of children residing with one parent, with both parents, or in a shared custody arrangement between parents on completion of family preservation services;
- replaces the requirement for the contract to allow DFPS, following the performance review, to impose financial penalties on the SSCC for failing to meet performance outcomes or award financial incentives to the SSCC for exceeding performance with a requirement for the contract to require DFPS to take those actions, as applicable, following the review;
 - requires that the contract require the provision of family preservation services to be transferred to the SSCC following the performance review;
 - replaces the requirement for the contract to require the SSCC to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area with a requirement for the contract to require the SSCC to implement such plans; and
 - authorizes the contract to require the SSCC to develop a program to recruit and retain foster parents from faith-based organizations, including requirements for the SSCC to:
 - collaborate with faith-based organizations to inform prospective foster parents about the need for foster parents in the community, the requirements for becoming a foster parent, and any other aspect of the foster care program that is necessary to recruit foster parents;
 - provide training for prospective foster parents; and
 - identify and recommend ways in which faith-based organizations may support persons as they are recruited, are trained, and serve as foster parents.

The bill repeals provisions requiring DFPS to develop, and work with OneStar Foundation to expand, a program to recruit and retain foster parents from faith-based organizations.

C.S.S.B. 1853 requires DFPS, in assessing the ability of an SSCC to satisfy the responsibilities and administrative requirements of delivering foster care services and services for relative and kinship caregivers, to assess the SSCC's ability to provide family preservation services. The bill includes family preservation services among the services that DFPS must transfer to an SSCC providing foster care services in an initial catchment area where community-based care has been implemented or a contract with an SSCC has been executed before September 1, 2017. The bill includes family preservation services among the services for which DFPS must include a provision in a contract with a SSCC to provide foster care services and services for relative and kinship caregivers in a catchment area to which community-based care is expanded after September 1, 2017, that requires the transfer to the SSCC of the provision of the services.

C.S.S.B. 1853, with respect to the definition of "case management" set out for purposes of statutory provisions governing community-based care, revises the provision establishing that case management includes the coordination and monitoring of services required by the child and the child's family to provide also that case management includes the coordination and monitoring of services required by caregivers and to specify that the specific services being coordinated and monitored include:

- pre-adoption and post-adoption assistance;
- services for children in DFPS conservatorship who must transition to independent living; and
- services related to family reunification, including services to support a monitored return.

In addition, for purposes of those provisions, the bill defines "family preservation service" in the same manner as that term is defined for purposes of the DFPS family preservation services pilot program and defines "faith-based organization" as a religious or denominational institution or organization, including an organization operated for religious, educational, or charitable purposes and operated, supervised, or controlled, in whole or in part, by or in connection with a religious organization. The substitute updates a reference to "faith-based entities" in the mandatory SSCC contracting provisions so as to refer instead to "faith-based organizations" and have that definition apply.

The bill's provisions relating to community-based care apply only to a contract with an SSCC entered into on or after the bill's effective date. A contract with an SSCC entered into before that date is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

Mandatory Services Participation

C.S.S.B. 1853, with respect to the selection of a service provider from which to obtain child and family services following a temporary court mandating participation in those services for a child who has been abused or neglected and their family, requires DFPS to reimburse a service provider selected by a parent who is not under contract with DFPS in an amount equal to the average cost for the specific service, including any virtual services, from DFPS contractors providing the service in the region where the parent resides. The bill requires DFPS to adopt rules relating to the manner in which providers are reimbursed for services provided, implement provisions relating to the selection of and reimbursement for a service provider using existing resources, and prioritize payments to providers of in-home support services under the enhanced in-home support program.

Repealed Provisions

C.S.S.B. 1853 repeals Sections 264.113(a), (b), and (c), Family Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1853 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision absent from the engrossed providing that, before a court may order temporary emergency supervision for a child, DFPS must submit a report to the court that includes information regarding each attempted placement.

The engrossed and the substitute both expand which families may receive family preservation services for purposes of the family preservation pilot program. However, whereas the engrossed expands the eligible families to include the family of a child who is in joint managing conservatorship with DFPS or in the relinquishment avoidance program or the family of a child who is the subject of an investigation of abuse or neglect that resulted in a disposition of reason to believe abuse or neglect occurred and, absent the provision of services, is a child DFPS plans to remove from the child's home, the substitute expands the eligible families to include the family of a child who is a member of a household that is the subject to an order to participate in child welfare services or the family of a child who is the subject of a monitored return of the child to the parent. The substitute omits the provision present in the engrossed including enhanced in-home support services and nonrecurring financial support to promote safe and stable families among the services classified as family preservation services.

The substitute makes those same changes with respect to the definition of "family preservation services" set out in the engrossed for purposes of statutory provisions governing community-based care so that the definitions remain identical.

The substitute includes provisions that were not in the engrossed regarding the selection and reimbursement of a service provider under the family preservation services pilot program or for purposes of receiving mandated child and family welfare services, as applicable.

The substitute includes provisions absent from the engrossed relating to the performance review provided for in a contract with an SSCC to provide community-based care services in a catchment area and the financial penalties or incentives imposed or awarded following such a review. Specifically, the substitute does the following with respect to the requirement for such a contract to allow DFPS to conduct a review of the SSCC beginning 18 months after the SSCC has begun providing the applicable services and determine if the SSCC has achieved any performance outcomes specified in the contract:

- replaces the requirement for the contract to allow DFPS to conduct such a review and make that determination with a requirement for the contract to require DFPS to do so;
- updates the language establishing when DFPS is to conduct a performance review to reflect the inclusion of family preservation services among the services a SSCC must provide; and
- establishes the performance outcomes that must be specified in the contract.

The engrossed did not make these changes. The substitute replaces the requirement for the contract to allow DFPS, following the performance review, to impose financial penalties on the SSCC for failing to meet performance outcomes or award financial incentives to the SSCC for exceeding performance with a requirement for the contract to require DFPS to take those actions, as applicable, following the review. The engrossed did not make this change. Moreover, the substitute replaces the requirement for such a contract to require the SSCC to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area with a requirement for the contract to require the SSCC to implement such plans. The engrossed did not make this change.

The substitute includes services related to family reunification, including services to support a monitored return, among the services specifically listed in the bill as a service the coordination and monitoring of which is considered case management. The engrossed did not make this change.