

## **BILL ANALYSIS**

S.B. 2120  
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Juvenile Justice & Family Issues  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 2019, the Texas Legislature passed S.B. 560, which required the Texas Judicial Council (TJC) to develop a statewide plan to address the lack of statewide data collection for court-ordered legal representation in certain suits affecting the parent-child relationship. The TJC tasked the Texas Indigent Defense Commission (TIDC) with data collection and reporting. The initial round of data reported to TIDC shows substantial variation throughout Texas in spending on court-ordered legal representation in child protective services cases. Additionally, the data shows wide variation in compensation amount and structure for attorneys appointed to represent parents or children, with inconsistency in methods for determining the indigency of parents in these cases. Accordingly, in 2022, the TJC adopted a resolution requesting that the legislature establish a Family Protection Legal Representation Program within TIDC.

S.B. 2120 seeks to implement that request to provide legal representation and services to indigent parents or children named in a suit filed by the Department of Family and Protective Services (DFPS). This bill also would provide for the development of qualification standards for attorneys representing persons in these proceedings and would direct counties to prepare a yearly report, including information on the procedures to provide persons with these services and the number of appointments made. Furthermore, TIDC would provide counties with administrative support, including trainings, implementation, and data support. These changes would help ensure that indigent parents and children involved in suits filed by DFPS receive competent legal representation.

### **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**

S.B. 2120 amends the Government Code to require the Texas Indigent Defense Commission (TIDC) to develop policies and standards for providing family protection services to indigent parents and children, in addition to its policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. With respect to the policies and standards that may be developed by TIDC, the bill makes the following standards relating to the representation of or provision of legal services to indigent defendants under current law applicable to an indigent individual:

- performance standards for appointed counsel;
- standards for ensuring appropriate appointed caseloads for counsel;

- standards governing the reasonable compensation of appointed counsel; and
- standards governing the operation of a legal clinic or program that provides legal services and is sponsored by a law school approved by the Texas Supreme Court.

In addition, the bill includes the following among the policies and standards TIDC may develop:

- qualification standards under which attorneys may qualify for appointment to represent indigent parents and children in suits filed by the Department of Family and Protective Services (DFPS), including the following:
  - qualifications appropriate for representing an indigent parent;
  - qualifications appropriate for representing a child;
  - successful completion of relevant continuing legal education programs required by law or the State Bar of Texas and approved by the Texas Judicial Council (TJC); and
  - testing and certification standards;
- standards for determining whether a person named in a suit filed by DFPS is indigent;
- policies and standards governing the organization and operation of an office of child representation or office of parent representation consistent with recognized national policies and standards;
- standards for providing family protection services under a contract defender program consistent with recognized national policies and standards;
- standards governing the availability and reasonable compensation of providers of family protection services for counsel appointed to represent indigent individuals;
- policies and standards governing the appointment of attorneys to represent indigent parents and children in proceedings with DFPS for suits affecting the parent-child relationship; and
- other policies and standards for providing family protection services as determined by TIDC to be appropriate.

S.B. 2120 repeals a statutory provision that requires the TJC to develop a statewide plan requiring counties and courts in Texas to report information on court-ordered representation for appointments made in suits affecting the parent-child relationship. Instead, the bill expands the scope of the TIDC plan establishing statewide requirements for counties relating to reporting indigent defense information to also include statewide requirements for counties relating to reporting family protection services information. The bill requires TIDC to use the information reported by a county to monitor the effectiveness of the county's family protection services, policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to family protection services.

S.B. 2120 repeals the requirement for each local administrative district judge for a court subject to the TJC's statewide plan, or a person designated by the judge, to prepare and provide the following information to the TJC not later than November 1 of each odd-numbered year:

- a copy of all formal and informal rules and forms the court uses to appoint representation in suits affecting the parent-child relationship;
- any fee schedule the court uses for court-ordered representation; and
- information on whether the court is complying with statutory provisions relating to appointments of attorneys ad litem, guardians ad litem, mediators, and guardians, including the lists and rotation system required by those provisions.

The bill requires each county instead to prepare and provide the following information to TIDC, in the form and manner prescribed by TIDC, not later than November 1 of each odd-numbered year:

- a copy of all formal and informal rules and forms governing the procedures the county uses to provide indigent parents and children with counsel in accordance with statutory provisions governing suits affecting the parent-child relationship;
- any fee schedule the court uses for family protection services representation; and

- information on the court's compliance with statutory provisions relating to appointments of attorneys ad litem, guardians ad litem, mediators, and guardians, including the lists and rotation system required by those provisions.

The bill requires the local administrative district judge in each county, or the person designated by the judge, to prepare and provide the requisite information with respect to all rules and forms adopted by the judges of the county.

S.B. 2120 further requires each county, not later than November 1 of each year, to prepare and provide the following information to TIDC for the preceding state fiscal year in the form and manner prescribed by TIDC:

- information on the number of appointments made to each attorney accepting appointments in the county for proceedings filed by DFPS under statutory provisions governing suits affecting the parent-child relationship; and
- information provided to the county, but not reported directly to TIDC, by those attorneys under the bill's provisions regarding the percentage of professional practice time that was dedicated to appointment as an attorney ad litem in the county in such a suit.

S.B. 2120 repeals a statutory provision that requires each county auditor, or other individual designated by a county commissioners court, to prepare and send to the TJC information on the money spent by the county during the preceding state fiscal year to provide court-ordered representation in suits affecting the parent-child relationship. Instead, the bill requires the county auditor in each county, or the person designated by the county commissioners court if the county does not have a county auditor, to prepare and send to TIDC in the form and manner prescribed by TIDC and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent parents and children during each state fiscal year, information showing the total amount expended by the county to provide family protection services and an analysis of the amount expended by the county, as follows:

- in each district, county, statutory county, and appellate court;
- in cases for which a private attorney is appointed for an indigent parent or child; and
- for investigation expenses, expert witness expenses, or other litigation expenses.

The bill requires each district and county clerk, as a duty of office, to cooperate with the county auditor or the designated person and the commissioners court in retrieving the information required to be sent to TIDC.

S.B. 2120 repeals the requirement for the TJC to annually submit a report on court-ordered representation in suits affecting the parent-child relationship, compiled from information submitted to the TJC, to the governor, lieutenant governor, and speaker of the house of representatives and to electronically publish the report. Instead, the bill includes the following among the contents of TIDC's annual report, which is submitted to the governor, lieutenant governor, speaker of the house of representatives, and TJC and published in written and electronic form:

- current family protection services practices in Texas as compared to state and national standards;
- efforts made by TIDC to improve family protection services practices in Texas; and
- recommendations made by TIDC for improving family protection services practices in Texas.

With respect to the information regarding the quality of legal representation provided by the counsel appointed to represent indigent defendants contained in the report, the bill expands the information to include legal representation provided by counsel appointed to represent indigent individuals. The bill also includes family protection services among the subjects for which TIDC may issue other reports, as determined appropriate by TIDC.

S.B. 2120 requires TIDC to provide technical support for the purposes of assisting counties in improving their systems for providing family protection services and promoting compliance by counties with the requirements of state law relating to family protection services. The bill also expands the scope of provisions regarding grant funding distributed by TIDC to certain entities

to assist a county in providing or improving the provision of indigent defense services to also provide for such funding for the purpose of assisting a county in providing or improving the provision of family protection services. Accordingly the bill includes the following among the entities to which such funding may be distributed:

- certain entities providing administrative services under an interlocal contract entered into for the purpose of providing or improving the provision of family protection services in the county;
- a nonprofit corporation that provides family protection services in the county; and
- an office of child representation or office of parent representation.

S.B. 2120 authorizes TIDC, by entering into an interlocal contract with one or more counties, to participate and assist counties in the creation, implementation, operation, and maintenance of a computerized system to be used to assist those counties in the provision and administration of family protection services and to be used to collect data from those counties regarding representation of indigent individuals in Texas. The bill authorizes TIDC to do the following:

- use appropriated funds to pay costs incurred under such an interlocal contract, including license fees, implementation costs, maintenance and operations costs, administrative costs, and any other costs specified in the contract; and
- provide training services to counties on the use and operation of a system created, implemented, operated, or maintained by one or more counties that have entered into such a contract with TIDC.

The bill exempts a computerized system created under these provisions of the bill from Information Resources Management Act provisions relating to statewide technology centers.

S.B. 2120 includes among the qualifications for the executive director of TIDC the qualification that the director must demonstrate an interest in the standards for and provision of family protection services to indigent individuals.

S.B. 2120 defines the following terms for the purposes of provisions relating to TIDC:

- "attorney ad litem" as an attorney appointed by a court to represent and advocate on behalf of an indigent parent or child in a suit filed by DFPS against a parent; and
- "family protection services" as services provided by an attorney, attorney ad litem, licensed investigator, social worker, forensic expert, mental health expert, or other similar expert or specialist to an indigent parent or child in a suit filed by DFPS against the parent or a DFPS investigation of the parent.

The bill includes in the definition of "assigned counsel program" for purposes of such provisions a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to serve as an attorney ad litem. The bill includes in the definition of "contract defender program" for purposes of such provisions a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to indigent parents or children named in a suit filed by DFPS against a parent.

S.B. 2120 amends the Family Code to require an attorney appointed as an attorney ad litem in a proceeding filed by DFPS under statutory provisions governing suits affecting the parent-child relationship to submit to the county or TIDC, not later than October 15 of each year and on a form prescribed by TIDC, a report for the preceding state fiscal year that describes the percentage of the attorney's professional practice time that was dedicated to the attorney's appointment as an attorney ad litem in the county for suits affecting the parent-child relationship.

S.B. 2120 increases from three years to five years the requisite amount of experience in practicing law required for a chief counsel directing an office of child representation or office of parent representation. In provisions requiring the chief counsel to have substantial experience in the practice of child welfare law and prohibiting the chief counsel and attorneys employed by the applicable office from engaging in the private practice of child welfare law, the bill replaces the references to child welfare law with references to child protection law.

S.B. 2120 repeals Section 71.0355, Government Code.

**EFFECTIVE DATE**

September 1, 2023.