

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2120
By: Zaffirini; Sparks
State Affairs
4/17/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 560 (2019) by Senator Kolkhorst, relating to a plan and report on court-ordered representation for certain suits affecting the parent-child relationship, directed the Texas Judicial Council to develop a statewide plan to address the lack of statewide data collection for court-appointed legal representation of families. The plan had to include any rules or fee schedules guiding CPS attorney representation, as well as the money spent by the county on attorney costs, including the costs of private attorneys, public defenders, litigation and other expenses.

The Texas Judicial Council tasked the Texas Indigent Defense Commission (TIDC) with S.B. 560 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 CPS cases. The data show 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 CPS cases. Accordingly, in 2022 the Texas Judicial Council adopted a resolution requesting that the Legislature establish a Family Protection Legal Representation Program within the TIDC.

S.B. 2120 would implement this resolution to provide legal representation and services to indigent parents or children named in a suit filed by the Department of Family and Protective Services. This bill also would create qualification standards for attorneys representing persons in these proceedings, ensuring that parents and children receive competent representation. S.B. 2120 also 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. What's more, the TIDC would provide these counties with administrative support, including trainings, implementation, and data support. These changes would ensure that indigent parents and children involved in suits filed by the Department of Family and Protective Services receive competent legal representation.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2120 amends current law relating to the establishment of a family protection representation program within the Texas Indigent Defense Commission.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 79.001, Government Code, by amending Subdivisions (1) and (4) and adding Subdivisions (1-a), (7-a), (8-a), (12-a), and (12-b), to define "attorney ad litem," "department," "family protection services," "office of child representation," and "office of parent representation," to redefine "assigned counsel program" and "contract defender program," and to make nonsubstantive changes.

SECTION 2. Amends Section 79.012(b), Government Code, to require the executive director of the Texas Indigent Defense Commission (TIDC) to meet certain requirements, including

demonstrating an interest in the standards for and provision of family protection services to indigent individuals.

SECTION 3. Amends Section 79.034, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires TIDC to develop policies and standards for providing certain services, including family protection services to indigent parents and children. Makes nonsubstantive changes.

(a-1) Authorizes the policies and standards to include:

(1) performance standards for counsel appointed to represent indigent individuals, rather than indigent defendants;

(2) qualification standards under which attorneys are authorized to qualify for appointment to represent:

(A) creates this paragraph from existing text and makes nonsubstantive changes; or

(B) indigent parents and children in suits filed by the Department of Family and Protective Services (DFPS), including:

(i) qualifications appropriate for representing an indigent parent;

(ii) qualifications appropriate for representing a child;

(iii) successful completion of relevant continuing legal education programs required by law or the State Bar of Texas and approved by the Texas Judicial Council; and

(iv) testing and certification standards;

(3) makes a conforming change to this subdivision;

(4) standards for determining whether a person accused of a crime or juvenile offense or named in a suit filed by DFPS is indigent;

(5)-(6) makes no changes to these subdivisions;

(7) 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;

(8)-(11) makes conforming and nonsubstantive changes to these subdivisions;

(12) makes a nonsubstantive change to this subdivision;

(13) policies and standards governing the appointment of attorneys to represent indigent parents and children in proceedings with DFPS under Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), Family Code;

(14) makes a nonsubstantive change to this subdivision; and

(15) makes conforming and nonsubstantive changes to this subdivision.

SECTION 4. Amends Sections 79.035(a), (b), and (d), Government Code, as follows:

(a) Requires TIDC to develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information and family protection services information. Makes conforming changes.

(b) and (d) Makes conforming changes to these subsections.

SECTION 5. Amends Subchapter C, Chapter 79, Government Code, by adding Section 79.0365, as follows:

Sec. 79.0365. FAMILY PROTECTION SERVICES INFORMATION. (a) Requires each county, not later than November 1 of each odd-numbered year and in the form and manner prescribed by TIDC, to prepare and provide to TIDC:

(1) 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 Title 5, Family Code;

(2) any fee schedule the court uses for family protection services representation; and

(3) information on the court's compliance with Chapter 37 (Appointments of Attorneys ad Litem, Guardians ad Litem, Mediators, and Guardians), including the lists and rotation system required under that chapter.

(b) Requires each county, not later than November 1 of each year and in the form and manner prescribed by TIDC, to prepare and provide to TIDC for the preceding state fiscal year:

(1) information on the number of appointments made to each attorney accepting appointments in the county for proceedings filed by DFPS under Title 5, Family Code; and

(2) information provided to the county by those attorneys under Section 107.0042, Family Code, if the attorneys do not report the information directly to TIDC.

(c) Requires the local administrative district judge in each county, or the person designated by the judge, to perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county.

(d) Requires the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, in each county, 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:

(1) in each district, county, statutory county, and appellate court;

(2) in cases for which a private attorney is appointed for an indigent parent or child; and

(3) for investigation expenses, expert witness expenses, or other litigation expenses.

(e) Requires each district and county clerk, as a duty of office, to cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to TIDC under this section.

SECTION 6. Amends Sections 79.037(a), (b), and (d), Government Code, as follows:

(a) Requires TIDC to:

(1) provide technical support for certain purposes, including to assist counties in improving their systems for providing family protection services. Makes conforming and nonsubstantive changes;

(2) to assist a county in providing or improving the provision of indigent defense services and family protection services in the county, distribute in the form of grants any funds appropriated for the purposes of Section 79.037 (Technical Support; Grants) to one or more of the following entities:

(A)-(C) makes no changes to these paragraphs;

(D)-(E) makes conforming and nonsubstantive changes to these paragraphs;

(F) an office of child representation or office of parent representation created under Subchapter G (Office of Child Representation and Office of Parent Representation), Chapter 107, Family Code; and

(3) makes no changes to this subdivision.

(b) and (d) Makes conforming changes to these subsections.

SECTION 7. Amends Subchapter C, Chapter 79, Government Code, by adding Section 79.041, as follows:

Sec. 79.041. FAMILY PROTECTION SERVICES INFORMATION SYSTEM. (a) Authorizes TIDC to, by entering into an interlocal contract with one or more counties under Chapter 791 (Interlocal Cooperation Contracts), 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 this state.

(b) Authorizes TIDC to use appropriated funds to pay costs incurred under an interlocal contract described by Subsection (a), including license fees, implementation costs, maintenance and operations costs, administrative costs, and any other costs specified in the interlocal contract.

(c) Authorizes TIDC to provide training services to counties on the use and operation of a system created, implemented, operated, or maintained by one or more counties under Subsection (a).

(d) Provides that Subchapter L (Statewide Technology Centers), Chapter 2054, does not apply to an indigent defense information system created under this section.

SECTION 8. Amends Subchapter A, Chapter 107, Family Code, by adding Section 107.0042, as follows:

Sec. 107.0042. REPORT ON PERCENTAGE OF PROFESSIONAL PRACTICE TIME AS ATTORNEY AD LITEM. Requires an attorney appointed as an attorney ad litem in a proceeding filed by DFPS under Title 5, not later than October 15 of each year and on a form prescribed by TIDC, to submit to the county or 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 under Title 5.

SECTION 9. Amends Sections 107.259(a) and (d), Family Code, as follows:

(a) Requires that an office of child representation or office of parent representation be directed by a chief counsel who meets certain criteria, including having practiced law for at least five years, rather than three years, and having substantial experience in the practice of child protection law, rather than child welfare law.

(d) Makes a conforming change to this subsection.

SECTION 10. Repealer: Section 71.0355 (Plan and Report on Court-Ordered Representation), Government Code.

SECTION 11. Effective date: September 1, 2023.