

BILL ANALYSIS

S.B. 1398
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that, in recent years, Texas has struggled to find adequate placements for certain children in its foster care system. S.B. 1398 seeks to address this issue by improving oversight over community-based care (CBC), expanding the services CBC can provide, and emphasizing the placement of foster children in residential placement, when available.

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. 1398 sets out and revises 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

S.B. 1398 amends the Family Code to prohibit DFPS or a single source continuum contractor from advocating for, and prohibits a court from rendering, an order placing a child in temporary emergency supervision if an appropriate placement is available. The bill also prohibits DFPS or the contractor, as applicable, and the court from considering a child's refusal to stay in a placement when determining whether the placement is appropriate. The bill defines "temporary emergency supervision" to mean the supervision and care provided by DFPS or a single source continuum contractor for a child without placement for whom DFPS has been appointed as the temporary or permanent managing conservator. The bill requires DFPS or the contractor, before a court may order temporary emergency supervision for a child, to submit a report to the court that includes information regarding each attempted placement, including the following information:

- the type of placement;
- the location of the placement;
- the date DFPS or the contractor contacted the placement; and
- the reason DFPS or the contractor determined the placement was not appropriate.

These bill provisions apply to a placement review hearing of a child regardless of the date on which DFPS is named the child's managing conservator. Accordingly, the bill updates references

to "temporary emergency care" by replacing the term with "temporary emergency supervision" for purposes of provisions relating to the placement of children in foster care.

Family Preservation Services Pilot Program

S.B. 1398 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 services approved under the Title IV-E state plan and 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; and
- with respect to the provision establishing that a parent, managing conservator, guardian, or other member of a household who obtains family preservation services from a provider selected by the person is responsible for the cost of those services:
 - removes a parent from that responsibility; and
 - specifies that the provision applies to a member of a household who is not a parent.

Community-Based Care; Single Source Continuum Contract Provisions

S.B. 1398, 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 bill updates a reference to "faith-based entities" in provisions relating to the foster care capacity needs plan and in the mandatory single source continuum contractor contracting provisions so as to refer instead to "faith-based organizations."

S.B. 1398 revises the requirement for the community-based care implementation plan to include DFPS's contract monitoring approach and a plan for evaluating the performance of each contractor and the community-based care system as a whole that includes an independent evaluation of each contractor's processes and fiscal and qualitative outcomes by doing the following:

- removing the specification that the evaluation of each contractor's processes and fiscal and qualitative outcomes is independent; and
- specifying that the implementation plan must include a plan for evaluating the continuous performance of each contractor and the community-based care system as a whole.

With respect to the requirement in current law for DFPS to annually post on its website the progress DFPS has made toward its goals for implementing community-based care, the bill specifies that the progress includes performance measure data from each single source continuum contractor, quality improvement plans and corrective action plans for each contractor, and a summary of contractor actions to be taken to address such plans.

S.B. 1398 requires DFPS to annually post on its website the list of single source continuum contractors providing community-based care services and a description of each contractor's full corporate structure, including divisions and subsidiaries. The bill requires a single source continuum contractor to provide such corporate structure information to DFPS.

S.B. 1398 revises requirements relating to the contents of a contract between DFPS and a single source continuum contractor for the contractor to provide community-based care services in a catchment area, as follows:

- revises the requirement for the contract to include provisions that establish a timeline for the implementation of community-based care in the catchment area by doing the following:
 - replacing the term "timeline" with "sequential plan"; and
 - replacing the requirement for the timeline for implementation to include a timeline for implementing case management services and family reunification support services with a requirement for the sequential plan for implementation to include a sequential plan for implementing those services and family preservation services in an order determined by DFPS based on community needs and readiness and contractor capacity;
- with respect to the requirement for the contract to include provisions that allow DFPS to conduct a performance review of the contractor beginning 18 months after the contractor has begun providing case management and family reunification support services to all children and families in the catchment area and determine if the contractor has achieved any performance outcomes specified in the contract:
 - replaces the requirement for the contract to include provisions that allow DFPS to conduct a performance review of the contractor beginning 18 months after the contractor has begun providing services to all children and families in the catchment area with a requirement for the contract to include provisions that require DFPS to conduct annual performance reviews of the contractor beginning on the first anniversary of the contract;
 - specifies that DFPS conducts such a performance review to determine if the contractor has achieved applicable performance outcomes and other requirements specified in the contract as determined by services implemented at the time of the review, including data related to:
 - the percentage of children reunified with their families after a suit is filed by DFPS;
 - the percentage of children who reenter DFPS conservatorship;
 - the percentage of children who remain in DFPS conservatorship until the age of majority;
 - the percentage of children who experience multiple placement moves while in substitute care; and
 - the percentage of families completing family preservation services to mitigate findings of abuse or neglect; and
 - includes the following as purposes for which such a performance review is conducted:
 - ensuring service authorizations are based on documented criteria and are not being used to negatively impact a child's access to care by conducting utilization reviews on a sample of cases at least biennially;
 - reviewing the contractor's compliance with requirements related to conflicts of interest and financial disclosures; and
 - assessing the adequacy of the contractor's provider network and service delivery system;
- replaces the requirement for the contract to include provisions that allow DFPS, following the performance review, to impose financial penalties on the contractor for failing to meet any specified performance outcomes or award financial incentives to the contractor for exceeding any specified performance outcomes with a requirement for the

contract to include provisions that require DFPS, following the review, to do the following:

- publish the review on DFPS's website;
- impose financial remedies on the contractor for failing to meet applicable performance outcomes, contract requirements, or deliverables, as determined by services implemented at the time of the review or for failing to follow applicable court orders relating to child welfare;
- award financial incentives to the contractor for exceeding applicable performance outcomes as determined by services implemented at the time of the review; and
- if deficiencies in the provision of services are identified, impose a corrective action plan to address the deficiencies that includes a timeline for addressing the deficiencies and that provides for escalating interventions if deficiencies are not addressed;
- requires the contract to include provisions that do the following:
 - allow DFPS to implement formal measures to ensure the contractor is delivering high-quality service, including quality improvement plans, financial interventions, and other appropriate interventions or restrictions;
 - require the adoption of a capitated funding methodology for the provision of all services not later than the third anniversary of the date the contract is executed; and
 - for a catchment area in which a contractor has not implemented services before September 1, 2023, if family preservation services are included in the initial service implementation, require:
 - an external review to ensure the contractor has adequate systems and processes in place to effectively provide family preservation services;
 - the establishment of performance outcomes specific to family preservation services; and
 - the achievement of the performance outcomes as a condition of continued provision or expansion of family preservation services;
- with respect to the requirement for the contract to include provisions that require the contractor to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area, including any of the stakeholder groups specified in statute:
 - specifies that the contractor must implement preliminary and ongoing community engagement plans that include the establishment of a community advisory committee that includes representatives from any of those stakeholder groups; and
 - requires the community advisory committee to meet at least quarterly and maintain, as the majority of the committee's membership, members not employed by or contracted with the contractor; and
- requires the contract to include provisions that require DFPS to include findings and recommendations from the advisory committee in the annual performance review, any corrective action plan, and any other applicable quality improvement measures.

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.

S.B. 1398 authorizes a contract with a single source continuum contractor to provide community-based care services in a catchment area to include provisions that require the contractor to develop a program to recruit and retain foster parents from faith-based organizations, including requirements for the contractor to do the following:

- 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.

S.B. 1398 requires DFPS, in assessing the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering foster care services and services for relative and kinship caregivers, to also assess the contractor's ability to provide family preservation services. The bill includes family preservation services among the services that must be transferred to a single source continuum contractor providing foster care services in each initial catchment area where community-based care has been implemented or a contract with a single source continuum contractor has been executed before September 1, 2017. The bill also includes family preservation services among the services that must be transferred to a single source continuum contractor in a contract with the contractor 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.

S.B. 1398 requires the formal review process developed by DFPS for purposes of evaluating a single source continuum contractor's implementation of placement services and case management services in a catchment area to include a monitoring schedule. The bill requires DFPS to post the monitoring schedule on its website.

S.B. 1398 establishes that the bill's provisions relating to community-based care apply only to a contract with a single source continuum contractor entered into or amended on or after the bill's effective date. A contract with a single source continuum contractor entered into before that date and not amended after that date is governed by the law in effect on the date the contract was entered into or amended, and the former law is continued in effect for that purpose.

Child and Family Services

S.B. 1398 revises a provision establishing that a parent, managing conservator, guardian, or other member of a household who obtains child and family services from a provider selected by the person is responsible for the cost of those services, as follows:

- removes a parent from that responsibility; and
- specifies that the provision applies to a member of a household who is not a parent.

State Auditor Review of Contracts

S.B. 1398 amends the Human Resources Code to change from annually to biennially the frequency with which the state auditor must review DFPS's performance-based contracts to determine whether DFPS is properly enforcing contract provisions with providers and to provide recommendations for improving DFPS oversight and execution of contracts.

Repealed Provisions

S.B. 1398 repeals Sections 264.113(a), (b), and (c), Family Code.

EFFECTIVE DATE

September 1, 2025.