

BILL ANALYSIS

C.S.H.B. 3331
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised over possible trauma suffered by children removed from their homes and placed in foster care as a result of the methods used to remove the child and because of the amount of time it takes for some cases to be decided. C.S.H.B. 3331 seeks to address these concerns to better protect children in such situations by revising and clarifying the procedures and grounds for terminating the parent-child relationship, for taking possession of a child, and for certain hearings in a suit affecting the parent-child relationship involving the Department of Family and Protective Services.

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. 3331 amends the Family Code to include among the evidence a court is prohibited from considering in making a finding by clear and convincing evidence and ordering termination of the parent-child relationship, and among the conditions under which the Department of Family and Protective Services (DFPS) is prohibited from taking possession of a child to protect the health and safety of the child, evidence that the parent, after taking reasonable precautionary measures, allowed a child, who is of sufficient maturity, physical condition, and mental ability to avoid substantial risk of physical harm, to engage in independent activities, including the following:

- traveling to and from the child's home and school, including by walking, running, or bicycling;
- traveling to and from the child's home and a commercial or recreational facility near to the child's home;
- engaging in outdoor play;
- remaining at the child's home unattended; or
- engaging in other age-appropriate normalcy activities.

C.S.H.B. 3331 redefines "neglect" for purposes of an investigation of a report of child abuse or neglect under provisions relating to the parent-child relationship or a suit affecting the parent-child relationship to expressly exclude the decision by a person responsible for a child's care, custody, or welfare, after taking reasonable precautionary measures, to permit such a child

to engage in those independent activities. The bill subjects a petition or motion for the termination of the parent-child relationship filed by DFPS to Civil Practice and Remedies Code provisions relating to sanctions for frivolous pleadings and motions and to a specified rule in the Texas Rules of Civil Procedure.

C.S.H.B. 3331 requires a court to consider, in a proceeding relating to a suit filed by DFPS requesting an order for possession of a child and determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home, whether based on all the information available at the time a reasonably prudent person would determine that the immediate danger to the child's physical health and safety caused by remaining in the child's home outweighs the emotional distress that results or may result from removing the child from the child's home or parent. The bill prohibits the court, in making such a determination, from considering expert testimony or authorizing a psychological evaluation of the child or an assessment of the child's mental health.

C.S.H.B. 3331 requires a court in an original suit affecting the parent-child relationship filed by a governmental entity that requests permission to take possession of a child without prior notice, after taking possession of a child in an emergency without a court order, or that requests to take possession of a child after notice and a hearing, if the court does not order the return of the child and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, to grant possession of the child to that person unless the court finds, specific to each person entitled to possession, the following:

- that the person cannot be located after the exercise of due diligence by DFPS or the person is unable or unwilling to take possession of the child; or
- that reasonable efforts have been made to enable the person's possession of the child but granting possession to that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including, as applicable, a danger that the child would be a victim of an offense of trafficking of persons or continuous trafficking of persons.

C.S.H.B. 3331 requires a person who otherwise qualifies to take possession of a child to be granted possession of the child if:

- the person did not receive possession of the child because the person could not be located or was unable to take possession; and
- the person's location is known and the person submits to DFPS a written request to take possession of the child.

C.S.H.B. 3331 requires DFPS to file a motion with the court requesting an order granting possession of the child to the person on receipt of such a written request to take possession of the child. The bill requires a court, if the court does not grant possession of a child with a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession, to place the child with a relative of the child unless the court finds that the placement with a relative is not in the best interest of the child.

C.S.H.B. 3331 removes the requirement for a court, at each permanency hearing in a suit relating to the review of the placement of a child under the care of DFPS, to make a finding on whether returning the child to the child's home is safe and appropriate and whether the return is in the best interest of the child. The bill requires the court to order instead, at the end of each such hearing, DFPS to return the child to the child's parent or parents unless the court finds, with respect to each parent, that there is a continuing danger to the physical health or safety of the child and that returning the child to the child's parent or parents is contrary to the welfare of the child. The bill expressly does not prohibit the court from rendering a temporary order of the

monitored return of a child to a parent. The bill sets out the time frame within which a court must render a final order for a child under DFPS care. The bill terminates the court's jurisdiction over the suit and establishes that the suit is dismissed without a court order if the court does not render a final order before the dismissal date.

C.S.H.B. 3331 expands the conditions under which a court may render a final order appointing DFPS as managing conservator of the child without terminating the rights of the parent of the child to include a finding by the court that there is sufficient evidence to demonstrate that termination of parental rights to a child is not possible or not in the child's best interest if the child has previously been in the conservatorship of DFPS.

C.S.H.B. 3331 revises provisions with regard to court-ordered participation by a member of the child's household in DFPS provided, purchased, or referred services. The bill, among other changes, authorizes DFPS to file a suit petitioning the court to render a temporary order requiring such participation. The bill sets out the venue and applicable rules and specifies the content of the required sworn affidavit supporting a petition for court-ordered participation. The bill authorizes the court to render a temporary restraining order and sets the deadline by which the court must hold a hearing on the petition.

C.S.H.B. 3331 provides for the appointment of an attorney ad litem to represent the interests of the child and an attorney ad litem to represent the interests of the parent in such a suit and requires the court to inform each parent of certain rights before commencement of the hearing. The bill sets out provisions relating to a parent claiming indigence and provides for the postponement of any subsequent proceedings for good cause shown. The bill prohibits a temporary order for participation from being rendered except after notice and hearing and requires the court, at the conclusion of the hearing, to deny the petition unless the court finds by a preponderance of evidence that abuse or neglect has occurred or there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession and services to the family are necessary to ensure the safety of the child. The bill requires the court, if the court finds sufficient evidence that such conditions exist, to do the following:

- state its findings of fact in the order;
- make appropriate temporary orders necessary to ensure the safety of the child; and
- order the participation in specific services narrowly tailored to address the findings made by the court.

C.S.H.B. 3331 provides for periodic status review hearings to assess continued need for the order. The bill establishes that a temporary order expires on the 180th day after the date the order is signed unless it is renewed and authorizes the court to renew the order on a showing by DFPS of a continuing need for the order after notice and hearing. The order may be renewed only one time for not longer than 180 days. The bill authorizes a party affected by the order to request the court to terminate the order at any time and requires the court to terminate the order on a finding that there is no longer a need for the order.

C.S.H.B. 3331 repeals Section 262.201(a-5), Family Code.

EFFECTIVE DATE

October 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3331 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute, with respect to the prohibition against a court, in making a finding and ordering the termination of the parent-child relationship, considering evidence that the parent allowed the applicable child to engage in certain independent activities and the prohibition against DFPS taking possession of a child based on evidence that the parent allowed the child to engage in certain independent activities, includes the condition that the prohibitions are applicable if the parent takes reasonable precautionary measures before allowing the child to engage in such activities. The substitute, with respect to the actions of a person responsible for a child's care, custody, or welfare who permits the child to engage in certain independent activities, specifies that such actions are not neglect, for purposes of investigations of a report of child abuse or neglect, if the actions are taken after the person has taken reasonable precautionary measures.

The substitute revises the bill provision regarding the determination of the reasonable effort that must be made with respect to preventing or eliminating the need to remove a child from the child's home by establishing a reasonably prudent person test for the determination and by prohibiting a court, in making such a determination, from considering expert testimony or authorizing a psychological evaluation or a mental health assessment of the child.

The substitute, with respect to the court's findings specific to each applicable person entitled to possession of a child that resulted in the court not granting possession to that person, includes as a condition of the finding that granting possession to that person presents a continuing danger to the child the condition that reasonable efforts have been made to enable that person's possession of the child.

The substitute includes provisions relating to an original suit filed by a government entity that requests to take possession of a child after notice and a hearing and sets out the circumstances under which another person entitled to possession may be granted possession.

The substitute does not include the authorization for a party to file a mandamus proceeding if the court fails to render a final order within a prescribed timeframe, but includes a provision terminating the court's jurisdiction if a final order is not rendered within a revised timeframe.

The substitute does not include a requirement for a court to conduct additional permanency hearings if DFPS has been named as a child's managing conservator in a final order that does not include termination of parental rights or that terminates a parent's parental rights.

The substitute makes certain revisions to provisions with regard to court-ordered participation by a member of the child's household in services provided, purchased, or referred by DFPS.