

BILL ANALYSIS

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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent child deaths in the state's foster care system revealed weaknesses in oversight of the Department of Family and Protective Services (DFPS). This bill is a follow-up from S.B. 6, 79th Legislature, Regular Session, 2005, to continue needed reforms in protective services and to improve quality and accountability in foster care.

As proposed, S.B. 758 clarifies certain provisions and makes adjustments to the privatization plan for foster care in Texas.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commissioner (executive commissioner) is modified in SECTION 5 (Section 264.106, Family Code) and SECTION 22 (Section 45.002, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 12 (Section 264.2011, Family Code) and SECTION 19 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 261.301(a), Family Code, to authorize the Department of Family and Protective Services (DFPS) to contract with a local law enforcement agency to provide forensic investigation support and assist case workers with assessment decisions and intervention activities. Requires DFPS to ensure that a law enforcement officer who conducts an investigation under a contract with DFPS receives the training described in Section 261.3011(b).

SECTION 2. Amends Section 261.303, Family Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Requires a medical facility, at the request of DFPS, to release records to DFPS relating to the injury or condition that formed the basis for the original report of a child transferred from a reporting medical facility without requiring parental consent or a court order.

(e) Requires a person, including a utility company, that has confidential locating or identifying information regarding a family that is the subject of an investigation under this chapter to release that information to DFPS.

SECTION 3. Amends Section 263.102, Family Code, by adding Subsection (f), to require DFPS, in developing the service plan for a child under two years of age, to consult with relevant professionals to determine the skills or knowledge that the child's parents must learn or acquire to meet the goals of the service plan. Requires the service plan to require therapeutic family visits between the child and the child's parents supervised by a licensed psychologist to promote family reunification and to educate the parents about issues relating to the removal of the child.

SECTION 4. Amends Section 264.012, Family Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires DFPS to spend money appropriated for the child protective services program (program) to pay reasonable and necessary burial expenses for a person for

whom DFPS is paying for foster care under Section 264.101(a-1)(2) and who dies while in foster care unless there is money in the person's estate or other money available to pay the person's burial expenses.

(b) Authorizes DFPS to accept donations, gifts, or in-kind contributions to cover the costs of any burial expenses paid by DFPS under this section.

SECTION 5. Amends Sections 264.106(b), (e), (g), (i), (j), and (k), Family Code, as follows:

(b) Requires DFPS, in accordance with Section 45.004 (Independent Administrators; Department Duties), Human Resources Code, to contract with private agencies for the provision of all necessary substitute care services and case management services in at least 10 percent of the cases in Texas, rather than using an independent administrator to contract for those services. Deletes existing Subdivision (3) regarding contracting with an independent administrator to coordinate and manage certain services, if cost beneficial. Makes conforming changes.

(e) Makes conforming changes.

(g) Makes conforming changes.

(i) Prohibits DFPS, except as provided by Subsections (j) and (k) and notwithstanding any other law, from directly providing substitute care services for children for whom DFPS has been appointed temporary or permanent managing conservator on and after September 1, 2009, rather than 2011.

(j) Makes conforming changes.

(k) Makes conforming changes.

SECTION 6. Amends Section 264.1062, Family Code, as follows:

Sec. 264.1062. New heading: CONTRACT FOR CASE MANAGEMENT SERVICES. Requires DFPS to contract with private agencies to provide case management services in at least 10 percent of the cases in Texas not later than September 1, 2009. Requires DFPS to select the private agencies through a competitive procurement process. Deletes existing text requiring DFPS to develop and implement a comprehensive multidisciplinary team to monitor and evaluate the performance of independent administrators. Deletes existing text setting forth the required composition of the team.

SECTION 7. Amends Section 264.1063, Family Code, to make conforming changes.

SECTION 8. Amends Sections 264.107(c), (d), (e), and (f), Family Code, as follows:

(c) Requires DFPS to institute the use of real-time technology in the DFPS placement system to screen possible options for a child and match the child's needs with the most qualified providers with vacancies. Deletes existing text regarding the duties of an independent administrator or other authorized entity.

(d) Requires DFPS to ensure that placement decisions are reliable and are made in a consistent manner. Deletes existing text regarding the duties of an independent administrator or other authorized entity.

(e) Requires DFPS, in making placement decisions, to consult with the child's caseworker and the guardian ad litem or court-appointed volunteer advocate and to use clinical protocols to match a child to the most appropriate placement resource. Deletes existing text regarding the duties of an independent administrator or other authorized entity.

(f) Makes a conforming change.

SECTION 9. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1071, as follows:

Sec. 264.1071. **PLACEMENT FOR CHILDREN UNDER AGE TWO.** Requires DFPS, in making a placement decision for a child under two years of age, to ensure that the child is placed with a person who will provide a safe and emotionally stable environment and who will be able to provide care for the child without disruption until the child is returned to the child's parents or DFPS makes a permanent placement for the child.

SECTION 10. Amends Section 264.113, Family Code, by adding Subsection (c), to require DFPS to work with the Department of Assistive and Rehabilitative Services (DARS) to recruit foster parents and adoptive parents who have skills, training, or experience suitable to care for children with hearing impairments.

SECTION 11. Amends Section 264.121, Family Code, by adding Subsection (c), to require DFPS to provide an information booklet to a child and foster parent, at the time a child enters the Preparation for Adult Living Program, describing the program and the benefits available to the child. Sets forth the benefits to be described in the booklet for the program.

SECTION 12. Amends Subchapter C, Chapter 264, Family Code, by adding Section 264.2011, as follows:

Sec. 264.2011. **ENHANCED IN-HOME SUPPORT PROGRAM.** (a) Requires DFPS to develop a program to strengthen families through enhanced support (support program) to the extent that funding is available. Requires the support program to assist certain low-income families and children in child neglect cases in which poverty is believed to be a significant underlying cause of the neglect and in which the enhancement of in-home support appears likely to prevent removal of the child from the home or to speed reunification of the child with the family.

(b) Provides that eligible families are able to receive limited funding from a flexible fund account to cover nonrecurring expenses that are designed to help the family accomplish the objectives included in the family's service plan.

(c) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules establishing specific eligibility criteria for the support program in this section, the maximum amount of money made available to a family from the flexible fund account, and the purposes for which money can be spent under the support program.

(d) Requires DFPS to evaluate the results of the support program to determine whether the support program is successful in safely keeping families together. Requires DFPS to continue the support program to the extent that funding is available if DFPS determines that the support program is successful.

SECTION 13. Amends Section 264.203(a), Family Code, to authorize DFPS to order the parent, managing conservator, guardian, or other member of the subject child's household to participate in services provided or purchased by DFPS to alleviate the effects of abuse or neglect that has occurred, reduce the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future, and to permit the child and any siblings to receive services.

SECTION 14. Amends Chapter 266, Family Code, as added by Chapter 268, Acts of the 79th Legislature, Regular Session, 2005, by adding Section 266.0031, as follows:

Sec. 266.0031. **COMMITTEE ON MEDICAL AND FINANCIAL ISSUES RELATING TO ABUSE AND NEGLECT.** (a) Provides that the committee on medical and financial issues relating to abuse and neglect (committee) is composed of nine members appointed by the executive commissioner. Requires certain representatives of interested parties to be included as members of the committee.

(b) Requires the executive commissioner to designate a member representing the Department of State Health Services as the presiding officer of the committee.

(c) Requires the committee to develop procedures and protocols for certain health care providers to detect child abuse and neglect and to recommend methods to finance certain programs.

(d) Requires the committee to report its findings and recommendations to DFPS and the legislature not later than September 1, 2009.

(e) Provides that this section expires January 1, 2010.

SECTION 15. Amends Section 2155.1442(a), Government Code, to delete existing text requiring the state auditor to report annually to the governor, lieutenant governor, speaker of the house of representatives, and comptroller on the auditor's recommendations and Health and Human Services Commission's (HHSC) and DFPS's implementation of each recommendation.

SECTION 16. Amends Section 40.071, Human Resources Code, to include heroin and cocaine, or any of its forms, to the chemicals and drugs targeted in the DFPS drug-endangered child initiative.

SECTION 17. (a) Amends Subchapter B, Chapter 42, Human Resources Code, by adding Section 42.0211, as follows:

Sec. 42.0211. SAFETY SPECIALISTS, RISK ANALYSTS, AND PERFORMANCE MANAGEMENT. (a) Requires the division designated by DFPS (division) to employ at least one specially trained investigation safety specialist and sets forth the certain duties of this specialist.

(b) Requires the division to employ at least one risk analyst and sets forth specific duties of the risk analyst.

(c) Requires the division to include a performance management unit and sets forth specific duties of this unit.

(b) Requires DFPS to implement the change in law made by the enactment of Section 42.0211, Human Resources Code, only to the extent that funding is available.

SECTION 18. Amends Subchapter B, Chapter 42, Human Resources Code, by adding Section 42.0221, as follows:

Sec. 42.0221. COMMITTEE ON LICENSING STANDARDS. (a) Requires the committee on licensing standards to review the standards relating to each license issued by DFPS.

(b) Sets forth the composition of the committee on licensing standards appointed by the governor.

(c) Provides that members of the committee on licensing standards serve two-year terms, with the terms of three members expiring February 1 of each year.

(d) Requires the committee on licensing standards to review and analyze the information provided by DFPS under Section 42.0455 and to make recommendations for policy and statutory changes relating to licensing standards and facility inspections.

(e) Requires the committee on licensing standards to report its findings and recommendations to DFPS and the legislature not later than December 1 of each year.

SECTION 19. (a) Amends Section 42.044, Human Resources Code, by adding Subsection (b-1) and amending Subsection (e), as follows:

(b-1) Sets forth required composition of the team that will conduct at least one of the unannounced, annual inspections of a residential child-care facility.

(e) Requires DFPS, in addition to DFPS responsibilities to investigate an agency foster home or agency foster group home under Subsection (c), to investigate certain incidents, conduct certain inspections, and conduct at least one annual enforcement team conference for each child-placing agency.

(b) Requires the executive commissioner to adopt rules specifying the types of alleged minimum standards violations that are considered to pose a high degree of risk to a child in the care of an agency foster home or agency foster group home under the age of six and is required to be investigated by DFPS under Section 42.044(a)(3), Human Resources Code, as added by this Act.

(c) Requires DFPS to implement the change in law made by this Act to Section 42.044, Human Resources Code, only to the extent that funding is available. Provides that the executive commissioner is not required to adopt rules as directed by Subsection (b) of this section if funding is not available.

SECTION 20. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0455, as follows:

Sec. 42.0455. FACILITY EVALUATION FORM. (a) Requires DFPS to develop an evaluation form to be completed by each facility regulated under this chapter or registered family home after an inspection of the facility or home.

(b) Requires the evaluation form to allow the facility or home to provide comments and suggest policy and statutory changes relating to licensing standards and inspection procedures.

(c) Requires DFPS to compile the information from the evaluations and provide the information to the committee on licensing standards for review.

SECTION 21. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.064, as follows:

Sec. 42.064. PROVIDER INFORMATION DATABASE. (a) Requires DFPS to maintain a database containing certain information regarding foster home licensing.

(b) Requires DFPS to maintain all denials, cancellations, or refusals to renew licenses to operate foster homes in the database established under this section.

(c) Requires DFPS to make the information in the database available to child-placing agencies.

SECTION 22. Amends Section 45.002, Human Resources Code, to make conforming changes.

SECTION 23. Amends Section 45.004, Human Resources Code, as follows:

Sec. 45.004. New heading: DEPARTMENT DATA SYSTEM DUTIES. Deletes existing Subsections (a) and (b) requiring DFPS to develop a strategy for contracting management support services from independent administrators.

SECTION 24. Amends Section 45.052, Human Resources Code, to make a conforming change.

SECTION 25. Amends the heading to Section 45.054, Human Resources Code, to read as follows:

Sec. 45.054. EVALUATION OF CASE MANAGEMENT SERVICES.

SECTION 26. Amends Sections 45.054(c) and (d), Human Resources Code, as follows:

(c) Requires DFPS to contract with a qualified, independent third party to evaluate privatization of case management services not later than the second, rather than the first, anniversary of the date DFPS enters into the first contract for case management services under this section. Deletes existing text regarding the privatization of substitute care. Deletes existing text requiring an evaluation to compare services provided by DFPS in similar regions. Makes conforming changes.

(d) Requires the independent third party with whom DFPS contracts with under Subsection (c) to submit its reports and recommendations to the House Human Services Committee, or its successor, and the Senate Health and Human Services Committee, or its successor, not later than September 1, 2011.

SECTION 27. Amends Section 45.101, Human Resources Code, to require DFPS, in the privatization of substitute care and case management services, to provide a new structural model for the community-centered delivery of substitute care and case management services to meet certain goals.

SECTION 28. (a) Requires DFPS to develop a child protective services improvement plan designed to build on the reform elements added by Chapter 268, Acts of the 79th Legislature, Regular Session, 2005. Requires DFPS, in developing the plan, to seek to expand on or modify initiatives that have resulted in demonstrable improvements that serve certain primary goals.

(b) Sets forth the required elements of the improvement plan.

(c) Requires DFPS to implement the improvement plan described by this section only to the extent that funds are available for that purpose. Requires DFPS, if funding is only available to fund some elements of the plan, to implement only those parts of the plan for which funding is available. Requires DFPS to contract for services needed to implement certain elements of the improvement plan to the extent feasible.

SECTION 29. (a) Requires DFPS to implement each element of the improvement plan required by Section 29 of this Act for which funding is obtained and continue to implement all reform activities required by Chapter 268, Acts of 79th Legislature, Regular Session, 2005, as modified by this Act, not later than December 31, 2007.

(b) Requires DFPS to prepare and submit a progress report detailing DFPS activities in implementing the plan described by Subsection (a)(1) at the end of each fiscal year beginning August 31, 2008. Requires the progress report to include DFPS's calculation of cost savings from reduced stays in foster care and any other cost savings that can be attributed to the implementation of the improvement plan and continued child protective services reforms.

(c) Requires DFPS to submit the implementation plan and periodic progress reports by this section to the governor, the lieutenant governor, the speaker of the house of representatives, appropriate oversight committees of the legislature, the Legislative Budget Board, and the state auditor.

(d) Provides that this section expires September 1, 2010.

SECTION 30. Repealer: Sections 264.106(a)(2) and (4), Family Code (defining "independent administrator" and "substitute care provider"); Sections 264.106(c) and (d), Family Code (regarding the services to be provided by and the actions prohibited by an independent administrator); Sections 45.001(6), (9), and (11), Human Resources Code (defining "independent administrator," "placement assessment," and "psychotropic medication"); Sections 45.054(a), (b), (e), (f), (g), and (h), Human Resources Code (regarding the privatization of substitute care and case management services on a regional bases in accordance with the transition plan); and Section 45.102 (Transition Plan Requirements), Human Resources Code .

SECTION 31. Effective date: September 1, 2007.