

BILL ANALYSIS

C.S.H.B. 2039
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent legislation sought to remove from the central registry of child abuse or neglect cases a parent who relinquishes parental rights due to high costs associated with providing mental health services for the child. There is concern that the legislation did not go far enough in ensuring that these parents are not subject to additional adverse consequences due to the relinquishment. Concerned observers note, for instance, that being in the registry can impact the ability of a person to secure employment. C.S.H.B. 2039 seeks to prevent parents from being further stigmatized for making difficult health decisions regarding their children.

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. 2039 amends the Family Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to remove a requirement that rules adopted by the executive commissioner of the Health and Human Services Commission regarding the central registry of reported cases of child abuse or neglect provide for cooperation with local child service agencies and cooperation with other states in exchanging reports to effect a national registration system. The bill instead requires such rules to prohibit the Department of Family and Protective Services (DFPS) from making a finding of abuse or neglect against a person in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child and to establish guidelines for reviewing the records in the registry and removing the records of such cases.

C.S.H.B. 2039 replaces a requirement that DFPS discuss with a person relinquishing custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child the option of seeking a court order for joint managing conservatorship of the child with DFPS before a person relinquishes custody of a child with a requirement that DFPS discuss that option with the child's parent or legal guardian before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of such a child. The bill removes from that requirement the condition that such joint custody is in the best interest of the child and instead exempts DFPS from the requirement if joint custody is not in the best interest of the child. The bill adds a temporary provision, set to expire September 1, 2019, requiring DFPS, not later than November 1 of each even-numbered year, to report to the legislature the following

information: the number of children suffering from a severe emotional disturbance for whom DFPS has been appointed managing conservator in order to obtain mental health services for the child, the number of such children for whom DFPS has been appointed joint managing conservator, the number of such children who were diverted to community or residential mental health services through another agency, and the number of persons whose names were entered into the central registry of cases of child abuse and neglect only because DFPS was named managing conservator of such a child.

C.S.H.B. 2039 repeals a provision relating to a study to develop alternatives to relinquishment of custody by parents solely to obtain mental health services for their children with severe emotional disturbances. The bill requires DFPS to implement the changes in law made by the bill using funds appropriated to DFPS for the state fiscal biennium ending August 31, 2017.

C.S.H.B. 2039 repeals Section 262.353, Family Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2039 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 261.002, Family Code, is amended by adding Subsections (b-1) and (d) and amending Subsection (c) to read as follows:

(b-1) The department may not disclose the name of a person who is included in the registry due to a finding of abuse or neglect that was based solely on the fact that the person relinquished custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child.

(c) Except as provided by Subsection (d), the [The] department may enter into agreements with other states to allow for the exchange of reports of child abuse and neglect in other states' central registry systems. The department shall use information obtained under this subsection in performing the background checks required under Section 42.056, Human Resources Code. The department shall cooperate with federal agencies and shall provide information and reports of child abuse and neglect to the appropriate federal agency that maintains the national registry for child abuse and neglect, if a national registry exists.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(d) The department may not provide to another state or a federal agency information regarding a person who is included in the registry due to a finding of abuse or neglect that was based solely on the fact that the person relinquished custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child.

No equivalent provision.

SECTION 2. Section 262.352, Family Code, is amended to read as follows:
Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD. (a) Before a person relinquishes custody

of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, the department must, if it is in the best interest of the child, discuss with the person relinquishing custody of the child

the option of seeking a court order for joint managing conservatorship of the child with

SECTION 1. Section 261.002(b), Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(b) The executive commissioner may adopt rules necessary to carry out this section. The rules shall:

(1) prohibit the department from making a finding of abuse or neglect against a person in a case in which the department is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child; and

(2) establish guidelines for reviewing the records in the registry and removing those records in which the department was named managing conservator of a child who has a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child [provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system].

SECTION 2. Section 262.352, Family Code, is amended to read as follows:

Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD. (a)

Before the department files a suit affecting the parent-child relationship requesting managing conservatorship [a person relinquishes custody] of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, the department must, unless [if] it is not in the best interest of the child, discuss with the child's parent or legal guardian [person relinquishing custody of the child]

the option of seeking a court order for joint managing conservatorship of the child with

the department.

(b) Not later than December 31 of each year, the department shall report the following information to the legislature

with respect to persons described by Subsection (a):

(1) the number of persons to whom the department has offered the option of seeking a court order for joint managing conservatorship of a child with the department; and

(2) the number of persons with whom the department shares joint managing conservatorship of a child.

No equivalent provision.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2015.

the department.

(b) Not later than November 1 of each even-numbered year, the department shall report the following information to the legislature:

(1) with respect to children described by Subsection (a):

(A) the number of children for whom the department has been appointed managing conservator;

(B) the number of children for whom the department has been appointed joint managing conservator; and

(C) the number of children who were diverted to community or residential mental health services through another agency; and

(2) the number of persons whose names were entered into the central registry of cases of child abuse and neglect only because the department was named managing conservator of a child who has a severe emotional disturbance because the child's family was unable to obtain mental health services for the child.

(c) Subsection (b) and this subsection expire September 1, 2019.

SECTION 3. Section 262.353, Family Code, is repealed.

SECTION 4. The Department of Family and Protective Services shall implement the changes in law made by this Act using funds appropriated to the department for the state fiscal biennium ending August 31, 2017.

SECTION 5. Same as introduced version.