

BILL ANALYSIS

C.S.S.B. 1889
By: Zaffirini
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.S.B. 1889 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.S.B. 1889 amends the Family Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require, rather than authorize, the executive commissioner of the Health and Human Services Commission to adopt certain rules regarding the central registry of reported cases of child abuse or neglect and to remove a requirement that those rules 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.S.B. 1889 specifies that, for purposes of investigations of reports of abuse or neglect of a child, neglect of a child does not include the refusal by a person responsible for the child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of DFPS if the child has a severe emotional disturbance, the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child, and the person has exhausted all reasonable means available to the person to obtain those mental health services.

C.S.S.B. 1889 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 for such discussion the condition that such joint custody is in the best interest of the child and instead exempts DFPS from the requirement for such discussion 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.S.B. 1889 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.S.B. 1889 repeals Section 262.353, Family Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1889 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 261.001(4), Family Code, is amended to read as follows:

(4) "Neglect"

includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 261.001(4), Family Code, is amended to read as follows:

(4) "Neglect":

(A) includes:

(i) [~~(A)~~] the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) [~~(B)~~] the following acts or omissions by a person:

(a) [~~(i)~~] placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily

harm to the child;

(ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(v) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; or

(C) with respect to [the failure by] the person responsible for a child's care, custody, or welfare, permitting [to permit] the child to remain in or return to the child's home without the person arranging for the necessary care for the child,

unless the person's failure to arrange for the necessary care for the child is solely a result of the person's inability to obtain mental health services necessary to protect the safety and well-being of the child after exhausting all reasonable means available to the person to obtain those services [after the child has been absent from the home for any reason, including having been in residential placement or having run away].

injury or a substantial risk of immediate harm to the child;

(b) [(ii)] failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) [(iii)] the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d) [(iv)] placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e) [(v)] placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; or

(iii) [(C)] the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; and

(B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(i) the child has a severe emotional disturbance;

(ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).

SECTION 2. Section 261.002(b), Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended.

SECTION 2. Same as engrossed version.

SECTION 3. Section 262.352, Family Code, is amended.

SECTION 3. Same as engrossed version.

SECTION 4. Section 262.353, Family Code, is repealed.

SECTION 4. Same as engrossed version.

SECTION 5. 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 engrossed version.

SECTION 6. This Act takes effect September 1, 2015.

SECTION 6. Same as engrossed version.