

- SUBJECT:** Revising grounds and procedures for terminating parental rights
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 8 ayes — Neave, Swanson, Cook, Frank, Leach, Talarico, Vasut, Wu
1 nay — Ramos
- WITNESSES:** For —Judy Powell, Parent Guidance Center; Julia Hatcher, Texas Association of Family Defense Attorneys; Jeremy Newman, Texas Home School Coalition; Andrew Brown, Texas Public Policy Foundation; Taran Champagne, Tina Freeman, Lyndsey Grant, Maggie Luna, Jeffrey Morgan, Cecilia Wood, Jessica Yeager; (*Registered, but did not testify*; M Paige Williams, for Dallas Criminal District Attorney John Creuzot; Jaclyn Finkel, Texas NORML; Meagan Corser, David OConnor)

Against — (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; David OConnor)

On — Tiffany Roper, Department of Family and Protective Services; Andrew Homer, Texas CASA; (*Registered, but did not testify*: Thomas Parkinson; Michael Schneider)
- DIGEST:** CSHB 567 would revise provisions governing the termination of a parent-child relationship, the conditions under which the Department of Family and Protective Services (DFPS) could take possession of a child, and the placement of a child after certain suits for possession. The bill also would establish a statutory definition of the term "neglect" that included actions or failures to act that resulted in harm or created an immediate danger of harm to a child.
- Termination.** CSHB 567 would establish that allowing a child to engage in independent activities that were appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture would not constitute clear and convincing evidence sufficient for a court to order the termination of the parent-child relationship. DFPS would be

prohibited from taking possession of a child based on evidence that a parent allowed a child to engage in such activities or that a parent tested positive for marijuana, unless the department had evidence that the parent's use of marijuana had caused significant impairment to the child's physical or mental health or emotional development.

Under the bill, a petition or motion filed by DFPS for termination of the parent-child relationship would be subject to Civil Practice and Remedies Code provisions related to sanctions for frivolous pleadings and motions and to a related rule of civil procedure.

Neglect. CSHB 567 would define "neglect" to mean an act or failure to act by a person responsible for a child's care, custody, or welfare that evidenced the person's blatant disregard for the consequences of the act or failure to act that resulted in harm to the child or that created an immediate danger to the child's physical health and safety. The bill also would replace language referencing "substantial risk" with "immediate danger."

CSHB 567 would specify that the definition of neglect would not include allowing a child to engage in independent activities that were appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

Placement of child after certain hearings. The bill would revise Family Code provisions concerning the placement of a child after a full adversary hearing held in a suit affecting the parent-child relationship and filed by a governmental entity that requested permission to take possession of a child without prior notice and hearing or in a suit filed by a governmental entity after taking possession of a child in an emergency without a court order.

In such suits, if the court did not order the return of the child to the parent or custodian from whom the child was removed and found that another parent or custodian entitled to possession of the child did not cause the immediate danger to the health or safety of the child or was not the

perpetrator of the alleged neglect or abuse, the bill would require the court to order the possession of the child by that person. However, the court would not have to order the possession of the child by that person if the court found, specific to each person entitled to possession, that:

- the person could not be located after the exercise of due diligence by DFPS;
- the person was unable or unwilling to take possession of the child; or
- reasonable efforts had been made to enable the person's possession of the child, but possession by that person presented a continuing danger to the child.

If the court did not order possession of the child by a parent or other custodian, the court would be required to place the child with a relative unless it found that the placement was not in the child's best interest. On receipt of a written request for possession of the child from a parent or other custodian entitled to possession who was not located before the adversary hearing, DFPS would have to notify the court and request a hearing to determine whether the custodian was entitled to possession.

At the end of each permanency hearing in a suit affecting the parent-child relationship in which DFPS had been appointed or designated as the temporary or permanent managing conservator of a child, the court would have to order the department to return the child to the child's parent or parents unless it found, with respect to each parent, that there was a continuing danger to the physical health or safety of the child and returning the child to the child's parent or parents was contrary to the child's welfare. The bill would not prohibit the court from issuing a temporary order for the monitored return of the child to the child's parent or parents.

Timely resolution. On the timely commencement of a trial on the merits related to a final order for a child under DFPS care, the court would be required to render a final order by the 90th day after the date the trial commenced. This 90 day period would not account for any recess during

the trial. If the court found that extraordinary circumstances necessitated extending the 90-day period, the court could grant one extension for no more than 30 days. The court would be required to issue a written order specifying the grounds on which the extension was granted and requiring the final order to be rendered by the 30th day after the date the extension was granted. A party could file a mandamus proceeding if the court failed to render a final order within the required time.

Court-ordered services. CSHB 567 would authorize DFPS to file a suit requesting a court to render a temporary order requiring a child's parent, managing conservator, guardian, or other member of the child's household to participate in services the department referred or provided. These could include services for reducing a continuing danger to the physical health or safety of the child caused by the parent or custodian or for reducing a substantial risk of abuse or neglect caused by the parent or custodian. The suit could be filed in a court with jurisdiction to hear the suit in the county in which the child is located and would be governed by applicable sections of the Texas Rules of Civil Procedure, except as otherwise provided.

A petition filed under the bill would have to be supported by a sworn affidavit by a person that was based on personal knowledge and stated fact sufficient to support a finding that the child had been a victim of abuse or neglect or was at substantial risk of abuse or neglect. The affidavit also would have to support a finding that there was a continuing danger to the child caused by the parent or other responsible person unless that person participated in services requested by DFPS.

The court would be required to hold a hearing on the petition by the 14th day after it was filed unless the court found good cause for issuing an extension. The extension could not exceed 14 days. The court also would be authorized to issue a temporary restraining order.

CSHB 567 would require the court to appoint an attorney ad litem to represent the interests of the child immediately after the suit was filed and before the hearing. During this period the court also would have to

appoint an attorney ad litem to represent the interests of the parent for whom participation in services was being requested. The court would have to inform each parent of their right to an attorney and, for a parent who was indigent and appeared in opposition to the motion, of the parent's right to a court-appointed attorney.

If a parent claimed indigence, the court would have to require the parent to complete and file an affidavit of indigence. The court also could consider additional evidence to determine whether the parent was indigent. If the court then determined that a parent was not indigent, the court would have to discharge the parent's attorney ad litem after the hearing and order the parent to pay the cost of the attorney's representation. The court could, for good cause, postpone any subsequent proceedings for not more than seven days after the date of the attorney ad litem's discharge to allow the parent to hire an attorney or to provide time for the parent's attorney to prepare for the hearing.

Under CSHB 567, an order to participate in services could only be issued after the notice and hearing requirements were met. At the conclusion of the hearing, the court would be required to deny DFPS's petition unless it found sufficient evidence that abuse or neglect had occurred or that there was a substantial risk of abuse, neglect, or continuing danger to the child's health or safety caused by the parent or other custodian and that services were necessary to ensure the child's health and safety.

If the court granted the petition and issued an order it would be required to:

- state its findings in the order;
- make appropriate temporary orders to ensure the child's safety; and
- order the parent or other responsible person to participate in specific services narrowly tailored to address the court's finding.

The court could not require a person who the court found did not cause the continuing danger or substantial risk of abuse or neglect to the child, or who was not the perpetrator of the alleged abuse or neglect, to participate

in services.

The court would have to hold a hearing within 90 days after issuing an order to review the status of each person required to participate in services, the child, and the services provided or referred. The court then would have to set hearings every 90 days to review the continued need for the order.

Orders would expire on the 180th day after being issued unless the court extended the order. Orders could be extended for no more than an additional 180 days only if requested by the person required to complete services and if the court found that:

- the extension was necessary to allow the person required to participate in services enough time to complete those services;
- the department made a good faith effort to timely provide the services;
- the person made a good faith effort to complete the services; and
- the completion of the services was necessary to ensure the physical health and safety of the child.

At any time, a person affected by an order could request its termination. The court would be required to terminate the order on finding it was no longer needed.

Other provisions. CSHB 567 would repeal several provisions of the Family Code related to advisory hearings and non-emergency removals of children.

The bill would take effect September 1, 2021, and would apply only to a petition, motion or suit filed by DFPS on or after the effective date.

SUPPORTERS
SAY:

CSHB 567 would reduce the harm caused to children when they are unnecessarily separated from their parents by reforming portions of the Family Code that govern when and under what conditions a child may be removed from their families or guardians. The bill would help to balance

the responsibility of the Department of Family and Protective Service (DFPS) to remove children who are in danger with the equally important task of leaving families intact wherever possible by establishing a statutory definition of "neglect" and limiting the length of Child Protective Services cases, among other changes.

Research has shown that children suffer trauma when they are removed from their homes, even if only for a few months. In the majority of cases handled by DFPS, children are removed for neglect. However, the state's current description of neglect is too broad and can lead to children being removed from their homes even when they are not in danger or being mistreated. By establishing a definition of neglect that would include only actions that placed a child in immediate danger, CSHB 567 would help prevent unnecessary removals and allow DFPS to focus on only the most serious cases. The bill's definition of neglect would not prevent the removal of a child from a dangerous situation, but would help keep children who were not in danger with their families and out of state custody.

In addition, the bill would provide protections for homeschoolers, parents who choose not to have children vaccinated for religious and or other reasons of conscience, those accused of certain nonviolent misdemeanor offenses, and economically disadvantaged parents who face unfair and increased risk of having their children removed relative to more affluent families. A study has demonstrated a statistically significant relationship between removals for an allegation of neglect and poverty, with children in rural and working-class areas of the state much more likely to be removed from their homes.

CSHB 567 also would make Texas law consistent with the requirements of the federal Family First Prevention Services Act, which seeks to reduce the number of children in foster care by providing services to preserve families at risk of separation before such a step becomes necessary. The bill would establish procedures for issuing orders requiring families to participate in services to prevent neglect or abuse, prioritizing support over removal.

In cases where it was necessary to remove a child from their parent or guardian, CSHB 567 would require courts to place the child with their non-offending parent or family when possible. This would restore the fair adjudication rights of non-offending parents, who often become a casualty of DFPS cases when they could provide a safe placement for a child. The bill also would require that children be returned to their families after a permanency hearing except when there is continuing danger, helping to ensure that children were returned home as quickly as safely possible.

CRITICS
SAY:

CSHB 567, though well intentioned, could result in unintended consequences for children in Texas. While the bill contains many positive steps toward reducing unnecessary and traumatic removals of children from their families, several of the bill's provisions could result in some children being left in unsafe situations.

By establishing a statutory definition of neglect that would include "blatant disregard" as an element of the definition, which could involve an inquiry into a parent's mental state, as well as only actions resulting in a child's immediate danger or actual harm, CSHB 567 could lead to children being left in risky situations because they could not be determined to fit the definition. Further study of the impact this change in definition could have on child protection investigations and processes throughout the state should be undertaken and considered before changes are made.

This section has been updated to provide more context for the arguments.