

## **BILL ANALYSIS**

C.S.S.B. 6  
By: Nelson  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Widespread problems have been documented in the State's existing systems for protecting children and vulnerable adults from abuse and neglect. The Legislature, the governor, and the agencies charged with providing child and adult protective services have recognized these problems and are committed to solving them through substantial reform of child and adult protective services. CSSB 6 is the result of recommendations on protective services reform received from numerous committees and other resources in the legislative, executive, and judicial branches of State government.

CSSB 6 would make dramatic, system-wide changes in protective services programs in order to strengthen investigations, support quality casework, improve the effectiveness of ongoing services, increase private sector involvement, build community partnerships, improve management and accountability, and support families' rights

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the State Bar of Texas in SECTION 1.05 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Executive Commissioner of the Health and Human Services Commission in SECTIONS 1.13, 1.30, 1.33, 1.41, 1.44, 1.45, 1.58, 1.70, 1.93, 2.02, 2.05, 2.06, 2.11, 2.12, and 3.04 of this bill.

### **ANALYSIS**

It is the committee's opinion that the bill includes the following significant provisions:

#### **ARTICLE 1. CHILD PROTECTIVE SERVICES**

Provides educational reporting requirements for students in foster care or other residential care under the conservatorship of the Department of Family and Protective Services (DFPS).

Directs the Texas Education Agency and the Texas Higher Education Coordinating Board to develop outreach programs to ensure awareness of exemptions available for certain foster and adopted children from payment of tuition and fees.

Provides new continuing education and other requirements relating to representation by attorneys ad litem.

Authorizes a court to order certain persons whose parental rights have been terminated to provide child support.

Directs DFPS to work with HHSC and the federal government to develop a program to provide medical assistance to children who were in DFPS conservatorship at the time of adoptive placement and need medical or rehabilitative care but do not qualify for adoption assistance.

Establishes certain monitoring requirements to ensure that enforcement action is expedited for delinquent child support obligors.

Increases criminal penalties for knowingly or intentionally making false reports of child abuse or neglect and also requires a person convicted of such an offense to pay attorney's fees incurred by a person who was falsely accused. Also establishes a civil penalty, and a collection mechanism, for such conduct.

Requires DFPS to provide to a relative or other individual with whom a child is placed any information needed to meet the needs of the child, which may include information related to abuse or neglect suffered by the child.

Sets new required response times for DFPS investigation of cases based upon an assessment of the severity and immediacy of harm to the child, and redefines the circumstances under which investigations are to be jointly conducted with a peace officer. Requires DFPS, in consultation with law enforcement, to develop guidelines and protocols for joint investigations, and to collaborate with law enforcement in developing a training program for such investigations.

Requires DFPS to establish a system to screen out less serious cases when the child's safety can be assured without further investigation.

Establishes criteria for casework documentation and management, and training on the use of data to monitor cases and make decisions.

Describes procedures to be followed if a parent or other person refuses to cooperate with a DFPS investigation of alleged abuse or neglect, and establishes a criminal penalty for interference with an investigation.

Establishes certain new requirements for providing informational material, including when appropriate a proposed child placement resources form, to a parent or other person having custody, and to the relative or designated caregiver, of a child that is the subject of an investigation.

Establishes criteria for forensic investigation support.

Requires DFPS to employ child safety specialists in each of its administrative regions, and defines the job responsibilities and duties of a child safety specialist.

Establishes criteria for the collocation of DFPS investigators and local law enforcement investigators, and directs DFPS, if practicable, to establish a children's advocacy center in counties that do not have such centers.

Establishes criteria for DFPS to perform background and criminal history checks and home studies of persons identified as a potential relatives or designated caregivers. Also establishes criteria for placement of a child with such persons.

Adds requirements, in certain court proceedings, that each parent, alleged father, or relative of the child before the court must submit a proposed child placement resources form.

Modifies the provisions relating to a family service plan by requiring that the service plan must state any specific skills or knowledge the child's parents must acquire or learn to achieve the plan goal, requiring DFPS or other authorized entity to write the service plan in a clear and understandable manner, and requiring court review of whether the parties have acquired or learned any specific skills or knowledge stated in the service plan.

Provides that a placement review report must contain a discharge plan for a child who is at least 16 years of age, and must evaluate whether the child's current educational placement is

appropriate. Directs DFPS, to the extent funding is available, to contract with outside entities to assist in the discharge planning process.

Adds Chapter 45 to the Human Resources Code, which provides significant new requirements relating to the privatization of substitute care and case management services. Includes a definitions section, timelines for privatization of substitute care and case management services, DFPS monitoring requirements, and a provision which permits DFPS to continue to provide substitute care and case management services in an emergency after the privatization deadline. Requires contractors to give hiring preference to qualified employees of DFPS in good standing whose positions may be eliminated as a result of privatization.

Directs DFPS to research and develop a comprehensive strategy for contracting for management support services from independent administrators on a regional basis, and sets forth required elements of the strategy. Establishes criteria that must be satisfied in order to transfer duties from DFPS to independent administrators. Directs DFPS to enhance contracting data systems to effectively manage, monitor, and evaluate contract performance.

Establishes criteria and timelines for DFPS's reorganization of staff responsibilities and the adoption of a transition plan. Also sets forth monitoring, evaluation, and reporting requirements for privatization efforts. Directs DFPS to create incentives for an independent administrator and its subcontract providers to achieve favorable outcomes for children and improved system performance.

Sets forth criteria and timelines for the adoption and implementation of a transition plan for the privatization of substitute care and case management services, and directs DFPS to implement privatization on a regional basis. Sets forth goals for privatization and elements that must be included in the transition plan.

Directs DFPS, in cooperation with the courts, to expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts and other individuals in court proceedings.

Directs DFPS, in accordance with new Section 45.004 of the Human Resources Code, to assess the need for substitute care and case management services throughout the state, contract with private entities to provide such services, contract with an independent administrator to coordinate and manage services in a designated geographical area, monitor the quality of services, and ensure that services are provided in accordance with all applicable laws and rules. Describes the powers, duties, and limitations of an independent administrator, and the provisions required to be in contracts between DFPS and independent administrators and in contracts between independent administrators and service providers. Directs DFPS, in determining whether to contract with an independent administrator, to consider performance under any previous contract. Establishes a deadline after which DFPS may not directly provide substitute care services and case management services, except in an emergency.

Sets forth criteria for monitoring and evaluating the performance of independent administrators and substitute care and case management service providers, and describes certain requirements relating to contracts for such services.

Includes certain provisions relating to a contract between DFPS and an independent administrator and to making and monitoring placement decisions. Authorizes DFPS to create regional advisory councils to assist in assessing the need for resources in a region and locating substitute care services in the region for hard-to-place children.

Provides a description of assessment services DFPS is to use upon removing a child from the child's home and after a child begins receiving foster care.

Sets forth requirements and criteria to be followed to assist children to make the transition to independent living. Directs DFPS to conduct surveys of children receiving substitute care services, and includes requirements relating to the surveys.

Authorizes DFPS to collaborate with courts and other local entities to develop and implement family group conferencing as a strategy for promoting family preservation and permanency for children.

Authorizes courts to impose appropriate sanctions in order to protect the health and safety of a child in the event of failure to follow a court order.

Directs DFPS to administer a grant program to provide funding to community organizations to respond to less serious cases of abuse and neglect and cases where allegations were not substantiated but involve a family that has been previously investigated for abuse or neglect, and sets forth requirements relating to the program.

Sets forth certain requirements that DFPS must follow to address a finding of disproportionate representation of children of a particular race or ethnicity in the child protective services system.

Directs DFPS to work cooperatively with the child fatality review committee and individual child fatality review teams. Directs the Department of State Health Services to develop and implement procedures necessary for the operation of the committee, to assist the committee in developing model protocols, and to promote and coordinate training to assist review teams in carrying out their duties.

Directs DFPS, in cooperation with certain entities, to support the expansion of court-appointed volunteer advocate programs into counties in which there is a need for such programs.

Establishes the Relative and Other Designated Caregiver Placement Program and sets forth criteria and deadlines for the development and administration of the program, including monetary assistance and additional support services for the caregiver.

Sets forth detailed requirements and criteria for medical care and services for child abuse and neglect victims and children in foster care, including provisions relating parental notification of significant medical conditions, consent for, and judicial review of, medical care for children in foster care, and the development of health passports for such children . Also includes provisions relating to educational needs of children in foster care, including development of an education passport for such children, and directs DFPS and HHSC to collaborate with the Texas Education Agency in developing policies and procedures to ensure that the needs of foster children are met in every school district.

Directs DFPS to fund evidence-based programs offered by community-based organizations that are designed to prevent or ameliorate child abuse and neglect. Sets forth certain criteria relating to prioritization and evaluation of such programs.

Provides that, with respect to caseworker supervisors, program directors, and program administrators, DFPS is not required to comply with certain management-to-staff ratio requirements set forth in the Government Code.

Sets forth certain requirements for managing and auditing contracts for residential care of foster children.

Directs the Children's Policy Council to study and make recommendations on minimizing the number of foster children placed in institutions and maximizing the number receiving community-based care, and on certain other issues relating to services provided to children with developmental disabilities or mental retardation.

Adds a requirement that DFPS is to license, register, and enforce regulations applicable to child-placing agency administrators.

Changes the DFPS sunset date to September 1, 2013.

Authorizes the HHSC executive commissioner or his designee to appoint certain advisory committees.

Establishes requirements relating to strategic use of technology by DFPS to improve operations.

Directs DFPS to develop a paperless information exchange pilot program and describes the elements and reporting requirements for the program.

Directs the HHSC executive commissioner to establish an investigations division to oversee and direct the investigation functions of the child protective services program. Sets forth certain requirements and limitations relating to the investigations division.

Includes specific requirements for DFPS to enhance training of child protective services caseworkers.

Requires DFPS to develop a statewide strategy for community partnerships to support the detection and treatment of child abuse and neglect and enhance the coordination of and delivery of services to children and families, and sets forth required elements of the strategy.

Requires DFPS to develop a comprehensive staffing and workload distribution plan for child protective services and describes the purposes of the plan. Sets forth criteria for the development and implementation of the plan.

Sets forth procurement procedures applicable to a contract for the purchase of substitute care services.

Requires DFPS to establish a drug-endangered child initiative aimed at protecting children who are exposed to methamphetamine or materials used in its manufacture. Includes reporting requirements for law enforcement agencies.

Modifies the information required to be included in the annual report on the regulation of certain facilities, homes, and agencies that provide child care services.

Amends the requirement for licensing child care institutions that operate certain noncontiguous facilities.

Requires DFPS to provide a standard inspection checklist and other forms for use in conducting inspections of residential child-care facilities, and sets forth criteria to be used in promulgating standards for such facilities. Includes provisions regarding the placement and care of children, the verification and monitoring of homes, the staffing and administration of child-placing agencies, and reporting requirements when a child is missing or if there is a serious incident involving a child.

Requires residential child care facilities to implement a behavior intervention program for children who need assistance in managing their conduct, and sets forth criteria for the program.

Requires periodic inspection of a random sample of agency foster homes and agency foster group homes. Sets forth monitoring and inspection requirements, and includes provisions relating to qualifications of personnel assigned to conduct inspections or investigations and to annual evaluations of inspection training programs.

Sets forth requirements relating to inspections and exit conferences for residential child-care facilities, and the conditions under which an application for a residential child-care facility license may be denied.

Permits DFPS to invalidate verification of an agency foster home or an agency group home under certain circumstances, and describes the circumstances under which DFPS may not issue, and may refuse to issue, a license, listing, registration, or certification.

Provides that an order relating to a residential child-care facility is valid for 30 days after the effective date of the order.

Describes various licensing procedures and requirements for administrators and facilities. Sets forth administrative hearing and appellate requirements. Establishes a criminal penalty for serving as a child-placing agency administrator without a license.

Repeals various sections of the Human Resources Code.

## ARTICLE 2. ADULT PROTECTIVE SERVICES

Requires DFPS to establish an investigation unit for adult protective services, and provides for notification of law enforcement when abuse, neglect, or exploitation is the result of criminal conduct.

Requires, where possible, that adult protective services workers should have professional credentials related to their work, and requires the development of recruitment and incentive programs to attract and retain qualified personnel.

Requires DFPS and the Texas Higher Education Coordinating Board to coordinate regarding recruitment for, and curriculum of, degree programs in fields relating to adult protective services.

Requires DFPS to develop and implement a training program for newly hired or newly assigned adult protective services workers, and describes the elements of the training program. Requires case management training for supervisors with emphasis on complex cases. Directs DFPS to establish a continuing education program for adult protective services, and describes the elements of the program.

Requires DFPS to develop and implement a quality assurance program for adult protective services and sets forth criteria and reporting requirements for the program.

Requires the establishment of a statewide public awareness campaign designed to educate the public regarding the abuse, neglect, and exploitation of elderly and disabled persons, and sets forth criteria for the program.

Requires development and maintenance of risk assessment criteria for use by DFPS in determining whether an elderly or disabled person is in a state of abuse, neglect, or exploitation and needs protective services.

Requires, where possible, that complex cases of abuse, neglect, or exploitation, specifically including financial exploitation, are assigned to personnel with the requisite experience and training.

Provides that if DFPS does not have resources to provide direct adult protective services, it shall contract with protective services agencies for the provision of such services, especially with respect to services in remote, rural, or previously unserved areas.

Requires DFPS, upon determining that a person is in danger and lacks the capacity to consent to adult protective services, to petition the appropriate court for an emergency order authorizing protective services. Adds criteria relating to information to be included in the petition, and includes provisions relating to the expiration and extension of emergency orders.

Directs HHSC to use technology where possible to improve the effectiveness and efficiency of the adult protective services program, and describes required elements of the technology planning process.

Directs HHSC to develop a caseload management reduction plan, and sets forth criteria, timelines, and reporting requirements for the plan.

Requires creation of a pilot program to identify long-term care facilities for elderly or disabled persons that are not licensed or are operating without providing required disclosure, and to identify residential facilities or arrangements that operate in violation of state law, and to take

appropriate corrective action. Sets forth criteria, timelines, and reporting requirements for the pilot program.

### ARTICLE 3. GUARDIANSHIP AND RELATED SERVICES

Requires DFPS to refer persons to the Department of Aging and Disability Services (DADS) for guardianship services if such persons meet certain specified criteria, unless a less restrictive alternative to guardianship is appropriate and available.

Requires DFPS and DADS to enter into a memorandum of understanding regarding the respective roles and duties of each agency relating to the referral for, and provision of, guardianship services.

Includes provisions relating to DFPS referrals in appropriate circumstances of persons for court-initiated guardianship.

Prohibits DFPS from serving as temporary or permanent guardian for any individual, and strikes contrary provisions in current law.

Authorizes DADS to serve as guardian of the person and/or estate for incapacitated persons as provided by law.

Sets forth detailed requirements and criteria applicable to cases in which disabled minors are referred to DADS in anticipation that the minor will need guardianship services upon becoming an adult, and to cases in which elderly or disabled persons are referred to DADS for guardianship services, including provisions relating to referrals to guardianship programs and appropriate courts, contracts for guardianship services, a quality assurance program for guardianship services, powers and duties delegated to DADS when serving as guardian, exemption from bonds, costs, and fees, applications for successor guardians, access to records or documents, legal representation of DADS, confidentiality and disclosure of information, indemnification for certain legal expenses, and immunity for DADS employees and volunteers acting in good faith and within the scope of their authority.

Requires DADS, while serving as guardian, to notify the appropriate court of the availability of a guardianship program or private professional guardian that can serve as successor guardian in circumstances where DADS is not aware of a family member or friend that is willing and able to serve as successor guardian.

Includes necessary provisions to effectuate the transfer of all powers, duties, functions, programs, activities, and funds of DFPS relating to providing guardianship services to DADS.

Requires HHSC to establish a transition plan for the transfer of DFPS guardianship cases to DADS.

### ARTICLE 4. REPORT; EFFECTIVE DATE

Requires HHSC to provide periodic progress reports on the implementation of the Act. Describes the required elements of such reports and who is to receive them. Authorizes the State Auditor to perform certain audits relating to the implementation of the Act.

In addition, certain provisions of the bill:

- are expressly made subject to the availability of funds
- apply prospectively
- have specific implementation and/or expiration dates
- add or amend definitions; or
- make conforming changes

**EFFECTIVE DATE:** September 1, 2005

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

Similarities between the two bills will not be noted. It is the committee's opinion that SB 6 (engrossed) and CSSB 6 differ in the following significant respects:

(1) Analogous provisions in both bills, but with significant differences:

- penalties for false reporting
- information to be provided to an individual with whom child is placed
- investigative procedures and timeframes
- law-enforcement style training
- casework documentation
- information relating to investigation procedures
- evaluation of relatives for placement
- requirements for the service plan
- requirements relating to contracts for substitute care (and case management-CSSB 6)
- transition plans
- assessing needs of child
- preparation for adult living
- cultural awareness
- Child Fatality Review Committee and review teams
- relative and other designated caregiver placement program
- medical care and educational services for foster children
- at-risk prevention efforts and programs
- foster care residential contract management
- DFPS sunset provision
- strategic use of technology
- caseload standards, caseworker replacement, staffing, and workload distribution
- contract procurement
- annual reporting requirements
- standard inspection checklists
- reporting requirements for serious incidents involving a child
- inspection of homes and other facilities
- exit conferences and provision of findings
- denial of license or certification relating to residential child-care facilities
- administrative penalties relating to child-care facilities
- provisions relating to license denial and other sanctions
- investigation unit for adult protective services
- qualifications and training for adult protective services personnel
- quality assurance program for adult protective services
- risk assessment criteria
- investigation of complex cases
- emergency orders
- guardianship and related services
- repealed provisions

(2) Significant provisions in CSSB 6 that do not have analogous provisions in SB 6 (engrossed):

- academic reporting concerning students in foster care
- additional duties of attorney ad litem



- child support orders for persons whose parental rights have been terminated, and monitoring and enforcement of such orders
- major new provisions for privatization of substitute care and case management
- evaluation of independent administrators
- monitoring performance of substitute care and case management providers
- use of real-time technology in child placement system
- new requirements for Children's Policy Council
- paperless information exchange pilot program
- drug-endangered child initiative
- risk assessment process for promulgating minimum standards
- behavior intervention programs and training
- coordination regarding recruitment for and curriculum of certain certificate or degree programs
- statewide public awareness campaign
- contracting for services if existing resources will not permit direct provision of services
- use of technology in connection with adult protective services
- caseload management reduction plan
- pilot program for monitoring certain unlicensed long-term care facilities
- comprehensive reporting and auditing requirements on the implementation of the Act

(3) Significant provisions in SB 6 (engrossed) that do not have analogous provisions in CSSB 6:

- discipline of attorney ad litem
- exchange of child abuse and neglect information between states
- audio/videotaping of investigations
- removal of certain investigative information from records
- reports of abuse by other children
- requirement for court finding re: medical consent
- length of time suit may be maintained on court's docket
- restrictions by rule on amount of state funds used for nondirect residential services
- study of privatization of child protective services
- substitute care services transition task force
- foster care developmental disabilities advisory committee
- child support for child in temporary managing conservatorship
- Texas foster grandparents program
- increase in family protection fee collected on suits for the dissolution of marriage, and new uses for such fees
- deletion of references to certain alternative accreditation
- pooled funding for foster care prevention services
- catastrophic case management
- quality assurance program for child protective services; quarterly reports
- protective services legislative oversight committee
- missing children website
- informal dispute resolution procedures
- residential child-care inspection information database
- requirements for certain background and criminal history checks
- drug testing and risk assessment for certain persons with access to children in residential child-care facilities
- prohibition on certain employment by residential child-care facilities
- additional requirements regarding range of penalties
- definition of "victim" in a provision of the Code of Criminal Procedure
- penal code provisions relating to certain injuries to, or exploitation of, a child, elderly individual, or disabled individual
- think tank meeting on child abuse and neglect investigations.
- caseworker function study
- use of local caseworkers
- Study of CPS and APS certification for Peace Officers

- maintenance of records
- community satisfaction survey
- self-identifying information by a person making a report
- release of confidential information
- management review following certain investigations
- status report of investigation
- internal review of investigation
- service determination by department or agency
- temporary emergency shelters
- option for local provision of services
- memoranda of understanding for certain persons needing multiagency services
- LBB monitoring and reporting on implementation of adult protective services provisions of the Act
- local adult protective services boards