

- SUBJECT:** Continuing the Department of Family and Protective Services
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 7 ayes — Raymond, Rose, Keough, Klick, Peña, Price, Spitzer
- 0 nays
- 2 absent — S. King, Naishtat
- SENATE VOTE:** On final passage, April 13 — 31-0
- WITNESSES:** (*On House companion bill, HB 2433*)
For — (*Registered, but did not testify:* Katherine Barillas, One Voice Texas; Ashley Harris, Texans Care for Children)
- Against — Judy Powell, Parent Guidance Center
- On — (*Registered, but did not testify:* Audrey Carmical and John Specia, Department of Family and Protective Services; Kyle Janek, Health and Human Services Commission; Amy Tripp, Sunset Advisory Commission)
- BACKGROUND:** **Department overview.** The Department of Family and Protective Services (DFPS) exists to protect children, adults 65 years of age or older, and individuals with disabilities. It was created in 2003 as part of a consolidation of health and human services agencies. The department’s functions were drawn from the former Department of Protective and Regulatory Services.
- A commissioner appointed by the executive commissioner of the Health and Human Services Commission oversees operations of DFPS. The HHSC executive commissioner and the DFPS commissioner develop rules and policies for the department with input from an advisory council appointed by the governor.
- DFPS investigates allegations of abuse or neglect of children or

vulnerable adults, places abused or neglected children in alternative living arrangements while seeking to address their long-term needs, and provides other services to help prevent abuse and neglect in these populations. In addition, the agency regulates child-care centers and residential child-care facilities to ensure that minimum standards for health and safety are met.

In fiscal 2013, the agency received nearly 229,334 reports of alleged child abuse or neglect, according to the Sunset Advisory Commission. In the same year, the agency received 98,920 allegations of abuse, neglect, or exploitation of elderly or disabled individuals. Staff also conducted 37,128 day-care inspections and completed 18,429 investigations in fiscal 2013.

Budget and staffing. In fiscal 2013, the agency spent \$1.37 billion, a little more than half of which was provided through federal funding streams. General revenue contributed 47 percent, or \$645 million, toward the agency's spending. At the end of the fiscal 2013, the department employed 10,650 staff and was authorized to fill 11,175 FTEs.

Child Protective Services (CPS) is the largest division within the agency, employing 7,759 of the department's filled positions and spending about 85 percent of its funds. The Adult Protective Services and Child Care Licensing divisions employed 958 and 509 staff, respectively, at the end of 2013. DFPS also operates a Prevention and Early Intervention program by contracting with local providers to deliver services in communities. The 83rd Legislature added 1,175 positions to the department's staffing for fiscal 2014-15. Most of these were CPS caseworkers, but 41 positions were added to support investigations of illegal child care operations.

DIGEST:

CSSB 206 would continue the Department of Family and Protective Services (DFPS) until September 1, 2027.

The bill would make various changes to Family Code, ch. 263, which governs the review of placement of children under the care of DFPS, and ch. 264, which governs child welfare services. The bill also would make changes to other sections of the Family Code, including those governing

adoption, investigations of child abuse or neglect reports, prevention and early intervention services, and educational services for children in foster care.

The bill would change procedural elements associated with the agency's assuming and managing conservatorship of children who were separated from their parents because of suspected or proven abuse or neglect. Some changes would be designed to protect children who were in the care of the state. For example, the bill would require shorter timelines for the completion of home studies and background checks in certain situations.

Notifications. CSSB 206 would make several changes to the notification procedures for parents and others involved with a child in managing conservatorship of DFPS, including requirements that the department:

- make a reasonable effort to notify a child's parent within 24 hours if there was a significant change in the medical condition of the child, if the child was enrolled or participating in a drug research program, or if the child received an initial prescription of psychotropic medication;
- notify a child's parent or parent's attorney, as well as other concerned parties, within 48 hours before a change to a child's residential child care facility; and
- notify a child's parent or parent's attorney as well as other concerned parties as soon as possible but not later than 10 days after the department became aware of a significant event affecting a child in the conservatorship of the department.

Information for prospective adoptive parents. The bill would provide for changes to the type of information shared with prospective adoptive parents and the manner in which the information would be shared. The bill would:

- allow the department to modify the form and contents of the health, social, educational, and genetic history report for a child based on factors specified by the department; and

- require the department to provide a child's case record upon request to prospective adoptive parents who had reviewed the history report and indicated a desire to proceed with the adoption.

Reporting requirements. CSSB 206 would specify certain reporting requirements for the department, including a report of statistics by county that related to key performance measures and data elements for child protection. This annual report would have to be made publicly available and would include information on the number of child abuse and neglect reports, the number of child deaths from abuse and neglect in the state, the number of children in managing state conservatorship at the time of their death, and the timeliness and the achievement of certain programmatic goals. The bill also would require the department to conduct an annual process to seek and evaluate public input on the usefulness of reporting requirements and any proposed changes.

Changes to Education Code. CSSB 206 would make various changes to the Education Code. For example, the bill would:

- provide for additional continuity related to a child's attendance at a school regardless of certain other changes in the child's conservatorship status;
- provide additional reasons for an excused absence from school for a child in conservatorship, including allowing an absence for an activity required under the child's service plan; and
- remove a prohibition on allowing tuition benefits for children who had exited DFPS conservatorship and were returned to their parents in certain situations.

New planning requirements. CSSB 206 would require DFPS to address its planning in three major areas.

Child Protective Services plan. The bill would require that DFPS develop and implement an annual business plan for the Child Protective Services program, which would include long-term and short-term performance goals, identification of priority projects, a statement of staff expectations

identifying responsible persons or teams, tasks and deliverables expected, resources needed to accomplish each project, a time frame for the completion of each deliverable and project, and the expected outcome for each project. By October 1 each year, the annual business plan would be submitted to the governor, lieutenant governor, speaker of the House, and chairs of the standing committees of the House and Senate with primary jurisdiction over child protection issues.

Prevention and early intervention services plan. The bill would require that DFPS develop and implement a five-year strategic plan for its prevention and early intervention services program and issue a new plan by September 1 of the last fiscal year in each five-year period. The plan would identify methods to leverage other sources of funding or provide support for existing community-based prevention efforts and would include a needs assessment that identified programs to best target the needs of the highest-risk populations and geographic areas. It also would have to identify the goals and priorities for the department's overall prevention efforts, identify methods to collaborate with other state agencies on prevention efforts, and identify specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals. DFPS would have to update the plan annually and post it on the department's website.

Foster care redesign plan. The bill would require that the agency develop and maintain a plan for implementing its foster care redesign initiative. The plan would have to include:

- a description of the department's expectations, goals, and approach to implementing foster care redesign;
- a timeline for implementing foster care redesign throughout the state, any limitations related to the implementation, and a contingency plan to provide continuity of foster care services delivery if a contract with a single source continuum contractor ended prematurely;
- delineation and definition of the case management roles and responsibilities of the department and the department's contractors

- and the duties, employees, and related funding that would be transferred to the contractor by the department;
- identification of and plans to address training needs;
 - a plan for evaluating the costs and tasks associated with each contract procurement, including the initial and ongoing contract costs for the department and contractor;
 - the department's contract monitoring approach and a plan for evaluating the performance of each contractor and the foster care redesign system as a whole that would include an independent evaluation of processes and outcomes; and
 - a report on transition issues resulting from implementation of the foster care redesign.

DFPS would update the implementation plan and post the updated plan on its website annually.

Changes to child care licensing. CSSB 206 would authorize more discretion in assessing administrative penalties for high-risk child care license violations. The bill also would direct the agency to develop, adopt, and publicize an enforcement policy that would delineate how the department determined appropriate disciplinary action for violations. The bill also would provide more flexibility to the agency in setting fees associated with child care licensing and would provide for the creation of a license and registration renewal process.

Sunset provision and effective date. Unless continued in existence as provided by the Texas Sunset Act, the department would be abolished on September 1, 2027. This provision would take effect only if HB 2304 by Price, SB 200 by Nelson, or similar legislation under consideration by the 84th Legislature did not become law. If HB 2304, SB 200, or similar legislation became law and provided for the continuation of the department, this provision would have no effect.

With the exception of certain executive commissioner rules related to licensing, certification, and registration renewals, the bill would take effect September 1, 2015.

SUPPORTERS
SAY:

CSSB 206 reflects the best efforts of many people to make essential changes to the Department of Family and Protective Services (DFPS) that would improve the lives of children in foster care, better protect children cared for in licensed or other regulated child care facilities, and improve the strategic planning of the agency. The bill also would reduce administrative burdens on DFPS caseworkers, which would assist them in doing their jobs more effectively and allow them to spend more time with children and families, along with potentially reducing turnover. The bill would represent a substantial step forward in improving outcomes for the state's most vulnerable populations.

In its recent reports, the Sunset Advisory Commission characterized DFPS as an agency frequently responding to crisis and criticism. Analysis by the Stephen Group indicated that caseworkers were able to spend only 26 percent of their time with children and families. The commission identified turnover of caseworkers, who are in a difficult and highly stressful work environment, as one of the biggest challenges the agency faces. Therefore, reducing unnecessary work for caseworkers became a core part of responding to the Sunset commission's findings. A key recommendation in the February 2015 Sunset report was to eliminate, clarify, and streamline burdensome and prescriptive statutory requirements. CSSB 206 is a reflection of the items that emerged from the process of determining which changes should be made through legislation and which should be made through other means.

Stakeholders have worked extensively on the bill to ensure that it reflects the relevant recommendations made by the Sunset Advisory Commission and that it would balance the needs of the agency, the rights of parents, and the safety and well-being of children. The findings of an operational review conducted by the Stephen Group, input from DFPS, and the recommendations of a workgroup appointed by Sen. Jane Nelson were considered along with the Sunset Advisory Commission's findings and recommendations in formulating the bill.

The notification requirements of the bill appropriately would allow

communication to parents via an attorney. While it is the standard practice for DFPS to notify parents, sometimes they prefer to receive communication through an attorney. The fact that attorneys have an ethical obligation to notify their clients creates an assurance that parents would be notified appropriately. Requiring the department always to notify parents, regardless of the situation at hand, would be overly rigid and would place a burden back on the caseworkers who would have to provide the notification.

CSSB 206 would allow DFPS to retain some discretion about which information to release to prospective adoptive parents, including the ability to modify the form they are required to use. The bill would require the agency to provide the child's case record if prospective adoptive parents requested it after receiving other information. This would be a sufficient and balanced approach.

The bill would require DFPS to report broad categories of data while not being overly prescriptive. This would be consistent with one intention of the bill — to eliminate specific measures in statute and give DFPS greater flexibility. The bill also would require DFPS to conduct a process each year to allow for stakeholder input on the measures DFPS should report. Stakeholders would have the opportunity to participate in the process required by the bill and advocate for any new measures they thought were important.

**OPPONENTS
SAY:**

While CSSB 206 reflects effort and progress in improving the quality of services for children in foster care or who are otherwise affected by DFPS' work, other specific improvements would not be addressed.

The bill includes a provision that would give DFPS the option to notify a parent or attorney in certain situations, but a parent always should be notified. By not clearly stating that a parent would have to be notified in the case of a significant event, the bill would create circumstances in which notification did not happen. This would be unfair to the parent and not good for the child.

DFPS should not have discretion about which information to release to prospective adoptive parents or the ability to modify the form they are required to use. Prospective adoptive parents need full access to certain information that can be critical in their decision to go forward with an adoption.

New reporting requirements in the bill should include reporting on the number of pregnant and parenting youth in foster care and the number who have been missing and have been victims of trafficking while in foster care. These are significant problems that are well known to be prevalent among foster youth, and they need to be tracked.

NOTES:

The Legislative Budget Board estimates CSSB 206 would have a negative net impact of \$1.4 million to general revenue through fiscal 2016-17.

SB 200 by Nelson, which would consolidate health and human services agencies and provide for the continuation of DFPS, passed the House on May 25.