

Children's Commission 87th Legislative Session Update on CPS-Related Matters

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Presentation Overview

12:00 PM – 1:00 PM

- HB 567
- Legal Procedure in CPS Cases
 - Pre-Removal
 - Post-Removal
 - Post-Final Order
- Relevant SAPCR Procedure
- Youth Aging Out Care
- Dual Status Youth

1:00 PM – 1:50 PM

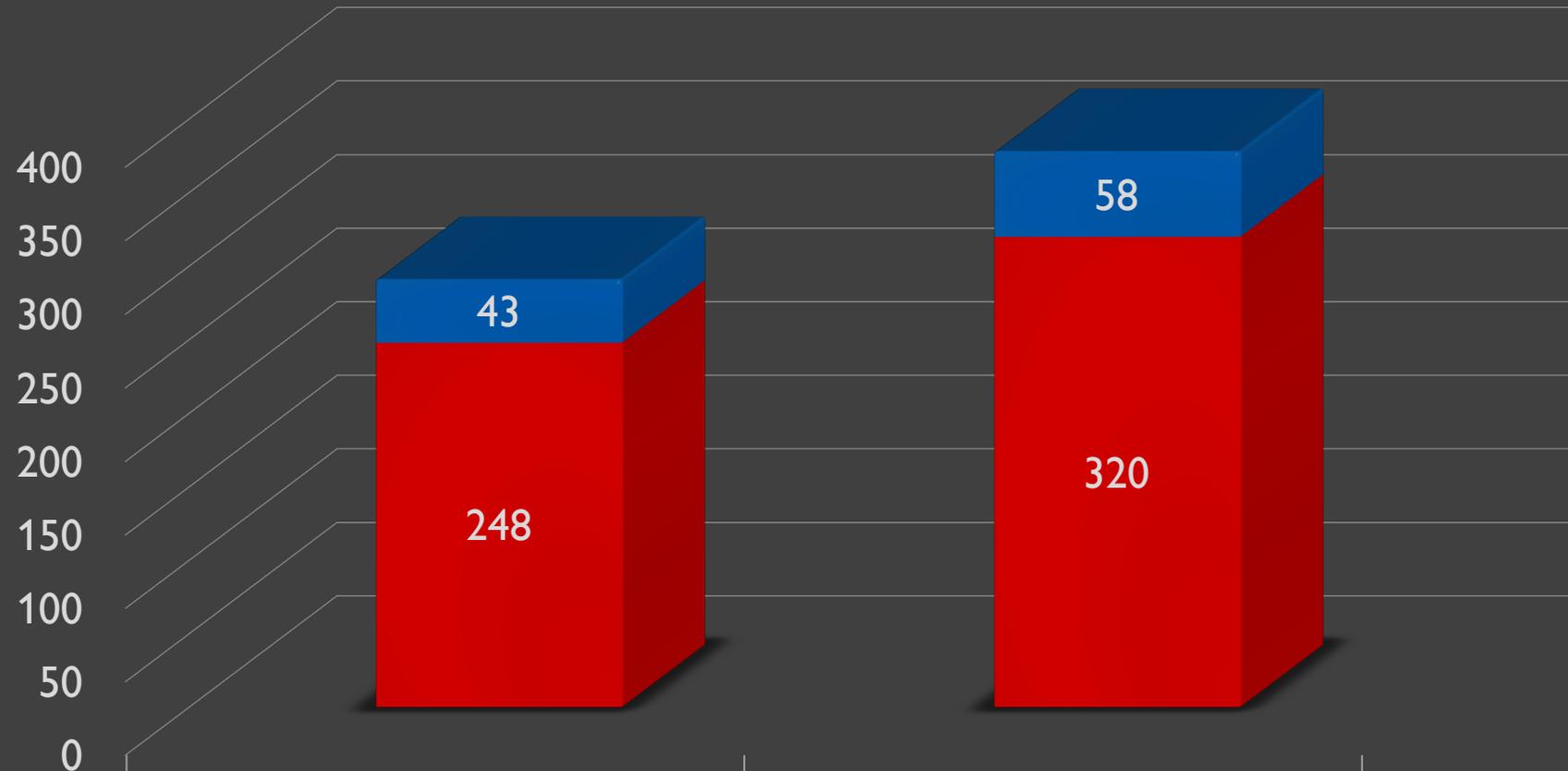
- Other Topical Issues
 - Human Trafficking
 - Education
 - Domestic Violence
 - Drug and Alcohol Recovery
- Administrative Considerations
 - Foster Care Licensing
 - Placement Capacity
 - DFPS Operations
 - Community Based Care

1:50 PM – 2:00 PM

- Question and Answer



Child Welfare Legislation Tracked by the Children's Commission



■ Bills Passed into Law
■ Bills Filed

86th Legislative Session

87th Legislative Session

43

58

248

320

House Bill 567

Effective September 1, 2021

HB 567

Family Code Sections

107.003(b),
107.004(d), (d-2),
(d-3), and (e),
161.001(c)
Amended

Sections 1 and 2: Expands the duties of an attorney ad litem for child to apply to suits filed under Chapter 264.

Section 3: Rephrases how the court must interpret the statutorily enumerated circumstances insufficient for termination of parental rights. Rather than prohibiting the court from making findings based on those circumstances, the language now states that evidence of one or more of these circumstances does not constitute clear and convincing evidence. Adds “allowing a child to engage in independent activities” to the list of circumstances.

Effective date: Applies only to a petition or motion filed by DFPS on or after September 1, 2021.

HB 567

Family Code

Section

161.101(b)

New Language;

Section

261.001(4)

Amended

Section 4: Clarifies that a petition or motion filed by the Department of Family and Protective Services in a suit for termination of the parent-child relationship is subject to Chapter 10 of the Civil Practice and Remedies Code, and Rule 13 of the Texas Rules of Civil Procedure.

Section 5: Changes the definition of “neglect.” A person’s acts or omissions must now evidence “blatant disregard” for the consequences of their actions or inactions that results in harm or immediate danger to the child’s physical health or safety. Instead of defining neglect as conduct that results in a “substantial risk,” the conduct must now constitute “immediate danger” to the child to constitute neglect. Allowing the child to engage in independent activities is added to the list of acts that do not constitute neglect.

HB 567

Family Code

Section

262.116(a)

Amended;

Section

262.201

(e),(g),(h), and (n),

Amended and

(g-1) and (q) New

Language

Section 6: Adds allowing a child to engage in independent activities and a parent's positive test for marijuana to the list of legally insufficient circumstances for removal, unless the parent's marijuana use caused significant impairment to the child's physical or mental health or emotional development.

Section 7: Creates a separate set of findings at the Adversary Hearing required for parents who were not involved in the circumstances of the removal. The court must place the child with that parent unless the parent cannot be located, or the court finds that possession of the child by the parent constitutes a continuing danger to the child despite reasonable efforts by DFPS to enable that parent's possession. If the parent is located by DFPS after the Adversary Hearing and makes a written request for possession of the child, DFPS must notify the court and request a hearing.

HB 567

Family Code

Section

263.002 (c)

Amended and

(d)

New Language;

Section

263.401 (b-3),

New Language

Section 8: At each Permanency Hearing before a final order, the court must order the child returned to a parent unless the court finds a continuing danger to the physical health and safety of the child and that returning the child to a parent(s) is contrary to the welfare of the child. The change does not impact the court's ability to order a monitored return under Section 263.403.

Section 9: Requires the court to make a finding of extraordinary circumstances to extend the dismissal date of a suit if a parent has made a good faith effort to complete a service plan but needs more time and the court intends to return the child once the plan is completed.

HB 567

Family Code

Section

263.4011

New Language;

Section

263.403(a-1),

Amended

Section 10: After commencement of trial on the merits, the court must render a final order in a case brought by DFPS within 90 days with no tolling for recesses. A party may file a mandamus proceeding to compel compliance. The court may grant a good cause extension that specifies the grounds and the length of the extension.

Section 11: Clarifies that a transition monitored return under Section 263.403 may allow for an additional six-month extension of the deadline to allow completion of the services specified in the order for return.

HB 567

Family Code Section 264.203 Amended and New Language

Section 12: Overhauls Section 264.203, sometimes referred to as Court Ordered Services or Motion to Participate. DFPS must file a suit in the jurisdiction where the child is located, and the petition must be accompanied by an affidavit stating sufficient facts for the court to make the required findings. The court must hold a hearing within 14 days of filing the petition, may grant a 14-day extension for good cause, and may render temporary restraining orders per Section 105.001.

Appointments of attorneys ad litem for parents and children is required when the petition is filed. However, if the parent is not found indigent, the attorney for the parent may be dismissed at the 14-day hearing and the court must order the parent to pay the attorney's cost.

HB 567

Family Code Section 264.203 Amended and New Language

Section 12, Continued: The court must deny the petition unless it makes findings under the ordinary prudence and caution standard that abuse and neglect has occurred, or there is substantial risk of abuse or neglect or continuing danger and that services are necessary to ensure the physical health or safety of the child.

Services ordered must be narrowly tailored to the court's findings and may only apply to a perpetrator of the alleged abuse or neglect. The court must review the order within 90 days and the order expires in 180 days unless extended by the court. The court may extend the order for 180 days upon a showing by DFPS of a continuing need for the order and may extend an additional 180 days if the court finds that the extension is necessary to complete the services ordered, DFPS made a good faith effort to provide services, the parent made a good faith effort to complete services, completing services is necessary to ensure the child's safety, and the extension is requested by the parent or their attorney.

HB 567

Repeals

Family Code Sections

- **262.113**
 - [Non-Emergency Removal (NER)]
- **262.1131**
 - [Temporary Restraining Order after NER]
- **262.201(b)**
 - [Timing of Adversary Hearing after NER]
- **262.201(j)**
 - [Temporary Order after Adversary Hearing following NER]

Legal Procedures in CPS Cases

Pre-Removal

HB 3379

Effective September 1, 2021

Family Code Section 261.101(a),(b), and (b-1) Amended

Amends the mandatory reporter statute to require that the person or professional must have "reasonable cause" rather than having "cause" to believe a child is abused or neglected.

Note: Changes only apply to reports made after September 1, 2021.



HB 135

Effective September 1, 2021

Family Code Sections 261.3027 and 261.3091 New Language

Requires a CPS investigator to inform the alleged perpetrator of the right to make an audio or video recording of the interview, that the recording is subject to subpoena, and for the investigator to document that notice of the right was provided to the parent. DFPS must provide two copies of the written notice to be signed by the person. DFPS must provide one signed notice to the person and retain the other signed notice in the case file.

Before conducting the interview DFPS must also notify the person in writing that they may request an administrative review of the DFPS findings and the person must sign an acknowledgement of receipt.



HB 2536

Effective May 15, 2021

Family Code Sections 161.001(c), 261.001(4), and 262.116(a) Amended

Adds seeking a second opinion of a child's medical care or transferring medical care to a new provider or facility to the list of legally insufficient reasons for removal and termination. Also excludes the same activities from the definitions of neglect.



HB 3041 Family Preservation Pilot

Family Code Section 262.401 New Language

Requires the creation of a Family Preservation Services Pilot Program by creating a new procedure under Chapter 262.

The program allows DFPS to dispose of an investigation by allowing the child who is a candidate for foster care to return home and providing time-limited family preservation services--subject to Family First Prevention Services Act qualifications--to children who are candidates for foster care or pregnant or parenting youth.

Defines a “candidate for foster care” as a child who is at imminent risk of being removed due to a continuing danger to the child’s physical health or safety but for whom a court has issued an order allowing the child remain safely in the home or in a kinship placement with services provided.

Note: Changes in the law apply only to a suit filed by DFPS on or after September 1, 2021.

HB 3041, Family Preservation Services Pilot, Continued

Family Code Sections 262.402 - 262.403 New Language

The pilot program must be implemented in one urban and one rural jurisdiction and at least one jurisdiction where Community-Based Care (CBC) has been implemented. The child's safety must be the primary concern in authorizing services.

DFPS must use Title IV-E Funds to pay for legal representation or provide counties a matching reimbursement for the costs of legal representation and use TANF to provide in-home support services.

DFPS must obtain a court order to compel the family of a candidate for foster care to participate in services, but a court order is not required to provide services to pregnant or parenting youth in foster care.

HB 3041, Family Preservation Services Pilot, Continued

Family Code
Sections 262.404
- 262.406;
262.412 - 262.414
New Language

The procedure is largely the same as the court order services procedure established by HB 567 with the following additions.

- The petition must also include a safety risk assessment that documents the process for the child to remain at home with appropriate family preservation services, the specific reason that DFPS should provide services to the family, and the manner in which the services will mitigate the risk.
- The court may order services for parent whose rights to another child were terminated.
- If the court finds clear and convincing evidence that aggravated circumstances exist, the court may order that services not be provided.

HB 3041, Family Preservation Services Pilot, Continued

Family Code Sections 262.407 – 262.410 New Language

- The family preservation plan must be developed with the family and be written in a manner that is clear and understandable to the parent in a language the parent understands.
- The plan must include a safety risk assessment, the reasons for DFPS involvement, be narrowly tailored to address the concerns, list the specific services the family will receive, state the manner by which the services mitigate the risk factors, specify the tasks the family must complete, and include contact information for DFPS or SSCC who will be the contact point for the family.
- The family must sign the plan but DFPS must submit the plan without the family's signatures if they refuse to sign.

HB 3041, Family Preservation Services Pilot, Continued

Family Code Sections 262.411; 262.415 – 262.416 New Language

- A parent may obtain services from a qualified provider selected by the person, but they are responsible for the cost and the provided services must be similar in scope and duration to the services in the service plan and the provider must certify that the parent completed the services.
- DFPS may contract for services, and in CBC regions, may contract with the SSCC to provide services.
- Performance measures include fewer children entering foster care in the pilot region, fewer children removed after receiving services, and fewer children entering foster care five years after receiving services compared to other regions.
- Courts that order services not subject to FFPSA must identify a method of financing the services and who will pay for them.

HB 3041, Family Preservation Services Pilot, Continued

Family Code Section 262.417 New Language

- DFPS must provide reports to the appropriate standing committees of the legislature one year after the pilot and every two years thereafter.
- The reports must include actions taken to ensure the successful implementation of the pilot, and analysis of the role of the courts, legal representatives, Child Protection Investigations, DFPS and the SSCC.
- The reports must also include analysis of any barriers and recommendations for overcoming them, data on performance-based outcomes, outcomes compared to other DFPS regions and recommendations regarding expansion of the pilot programs.

HB 3041

Other Provisions

Family Code Sections

263.202(b)

Amended;

262.1095

Amended;

Section 264.2031

New Language

Modifies findings in Status Hearing that the plan must be “narrowly” not “reasonably” tailored to address specific issues.

Requires DFPS to provide information to relatives in writing and must include the ability and the requirements to participate in the care and placement of the child as well as deadlines, timelines, and procedures of a SAPCR under Chapter 262.

Adds to the court ordered services/motions to participate section that a parent may obtain services from a qualified provider selected by the person, but they are responsible for the cost, the provider must certify the parent completed the services, and DFPS must accept the providers verification as proof of completion.

SB 1578

Effective September 1, 2021

Family Code Sections 261.3017 Amended and 261.30171 New Language

If DFPS, the child's primary care physician, or parent or legal guardian requests a specialty consultation, DFPS must refer the case to a specialty consultation with a board-certified physician who was not involved in the report of suspected abuse or neglect.

Before the specialty consultation, DFPS must provide written notice of the name, contact information, and credentials of the specialist to the child's parent or legal guardian and they may object to the proposed referral and request referral to another specialist.

DFPS and the parent or legal guardian must collaborate in good faith to select an acceptable specialist from the proposed specialists, but DFPS can refer the child's case to a specialist over the objection of the parent, legal guardian, or attorney. The parent may still seek a second opinion and DFPS must consider the second opinion and document its analysis.



SB 1578, Continued

Family Code Sections 261.30175, 261.504(a-1) New Language

A health care practitioner who reports suspected abuse or neglect of a child may not provide forensic assessment services in connection with an investigation and DFPS must refer the case to a practitioner who was not involved with the report of suspected abuse or neglect.

DFPS may still interview the health care practitioner in the practitioner's capacity as a principal or collateral source as part of the investigation.

Courts may consider an opinion from a medical professional obtained by an individual against whom a protective order is sought when making findings about whether the child is or has been a victim of abuse or neglect.



SB 1578, Continued

Family Code Sections 262.102(b-1), 262.104(c), 262.201(i-1) New Language

Forbids an emergency removal order or an emergency removal prior to a court order based solely on the medical opinion of a doctor under contract with DFPS who has not examined the child.

In making a determination at the Adversary Hearing regarding immediate danger, the court must consider the opinion of a medical professional obtained by the child's parent.

Note: The changes in law apply only to a suit affecting the parent-child relationship filed on or after September 1, 2021.

Post-Removal

SB 904

Effective September 1, 2021

Family Code Section 107.004(b-1) Amended; Section 107.004(b-2)-(b-4) New Language

Adds a new trauma training requirement to be eligible for court-appointed attorneys to qualify for appointments as an attorney ad litem of a child in a child welfare case. The attorney must provide proof that the attorney completed a training program on trauma-informed care and the effect of trauma on children in DFPS's conservatorship.

This is in addition to the existing training requirement for three hours of legal education each year related to representing a child. However, the trauma training may also apply toward the three-hour requirement if it is completed in the same year. Attorneys must complete the new requirement as soon as practicable after listed as qualified for appointment.

Requires attorneys to complete the training by September 1, 2022.



HB 3774

Effective September 1, 2021

Family Code Sections 107.004(d)-(e), Amended

Rather than filing a written statement with the court, an attorney ad litem for a child must now report to the court at each hearing whether they met with the child or the child's caregiver prior to the hearing as required by statute or whether they are requesting a finding of good cause that meeting with the child was not feasible or the best interest of the child. The duty now applies to suits filed under Chapter 264 in addition to suits filed under Chapters 262 and 263.



HB 1227

Effective September 1, 2021

Family Code Section 154.001 Amended

If a court presiding over a DFPS SAPCR orders child support payments or modifies child support payments that require the payments to be made to DFPS, the court must notify the Office of the Attorney General within 10 days.

Applies to a proceeding that is pending in a trial court on or filed on or after September 1, 2021.



HB 1315

Effective September 1, 2021

Family Code Section 107.016 Amended

Requires that an order appointing DFPS permanent managing conservator must continue the appointment of the attorney ad litem or the guardian ad litem, or the attorney serving in the dual role for the child, as long as the child is in DFPS Conservatorship. The court may continue the appointment of both the attorney ad litem and the guardian ad litem.

Applies to a proceeding that is pending in a trial court filed on or after September 1, 2021.



SB 1575

Effective September 1, 2021

Family Code Sections 263.00201 New Language; Section 264.018(a)(5) Amended; Section 264.1077 New Language

Defines placement in a Qualified Residential Treatment Program (QRTP) as defined by the FFPSA and requires that within 60 days of a child's placement in a QRTP, the court must consider any assessment required by FFPSA regarding the child's placement, determine whether the child's needs can be met through placement in a foster home and, if not, whether placing the child in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan.

The court must then approve or disapprove the placement. Any documentation prepared for the review and documentation regarding approval or disapproval by the court must be included in and made part of the child's permanency plan.



SB 1575, Continued

As long as a child remains in a QRTP, DFPS must provide the court with information at the status review hearing and each permanency hearing demonstrating that ongoing assessment of the child's strengths and needs shows the needs of the child cannot be met through placement in a foster home, placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment, and the placement is consistent with the short-term and long-term goals for the child specified in the permanency plan.

DFPS must also provide information documenting the specific treatment or service needs that will be met for the child in the placement, the length of time the child is expected to need the treatment or services, the efforts made by DFPS to prepare the child to be placed home, with a foster home, or relative, legal guardian, or adoptive parent.

The review of a child's placement in a QRTP may be conducted through a remote proceeding and the placement of a child in a QRTP is considered a significant event requiring notice to the parties under Section 264.018(a)(5).



HB 2924

Effective September 1, 2021

Family Code Sections 161.001(d-1) Amended; Section 262.2015(b) New Language

Prohibits a court from ordering a finding of termination on the M ground unless the petition for termination is filed before the first anniversary of the date DFPS was granted managing conservatorship in a case where the parents rights were terminated based on D & E.

Deletes prior termination of parental rights from the aggravated circumstances under 262.2015.



Post-Final Order

HB 2058

Effective September 1, 2021

Family Code Section 263.503 Repealed; Section 263.5031 Amended

Adds normalcy requirements already required for Permanency Hearings before a final order to Permanency Hearings after a final order.



SB 1896

Effective June 14, 2021

Family Code Section 263.409 New Language

Before entering a final order awarding permanent custody of a child in DFPS conservatorship to a relative, the court must verify that the relative was offered the opportunity to become licensed foster placement to qualify for a permanent care assistance (PCA) agreement and that the relative declined and the child placing agency (CPA) has been notified of this decision.



HB 2926

Effective September 1, 2021

Family Code Sections 161.301 - 161.304 New Language; Section 262.1095(a) Amended; Section 262.114(d) New Language

Allows a petition to reinstate parental rights to be filed by DFPS, a Single Source Continuum Contractor (SSCC), the attorney ad litem for a child, or a parent whose rights were involuntarily terminated. If the petitioner is the parent, they must provide DFPS with 45 days notice of their intent to file. Notice of the petition must be served on the child, the county attorney, the child's attorney, DFPS or the SSCC, the former parent (if they are not the petitioner), and the tribe (if the child is subject to ICWA).



HB 2926, Continued

A petition for reinstatement may be filed two years after termination and the child must not have been adopted or in an agreed adoptive placement.

The petition must include the name of the petitioner, the name and address of the parent, the name, date of birth, and residence of the child, and contact information for any party that participated in the termination hearing that has relevant information to the petition.

The petition must also include a summary of the termination grounds, a summary of the facts and evidence that demonstrate the parent's current fitness, a statement of the child's consent if the child is 12 years or older, and a summary of the parent's prior requests for reinstatement (if the petitioner is not the parent).



HB 2926, Continued

A hearing must be held within 60 days, the petitioner has the burden of proof, and the court must find by preponderance of the evidence that reinstatement of parental rights is in the child's best interest, the parent has remedied the conditions that were the grounds for termination, the parent is willing and capable of performing parental duties, two years have passed, the child has not been adopted, and the child consents (if older than 12).

If the child is younger than 12 years old, the court must consider the child's wishes in making the determination.

HB 2926, Continued

The court may grant, deny, or defer the petition for six months and render a temporary order awarding the parent possessory conservatorship. DFPS must monitor the parent and the court must hold another hearing to revisit the reinstatement when the temporary order expires. If the petition is denied, a new petition may not be filed for one year after the date of the order.



HB 2926, Continued

Additional provisions: DFPS must notify the relatives it has identified of their right to file a petition for conservatorship post-termination. Adds language expanding the relatives DFPS must attempt to identify from the third degree of consanguinity to the fourth degree. When making placement decisions for the child DFPS must give preference in hierarchical from relatives, to fictive kin, to foster homes, to general residential operations.



Relevant SAPCR Procedure

HB 868

Effective September 1, 2021

Family Code Section 105.002(c) Amended

Authorizes a jury verdict to rule regarding the right to determine the child's primary residence for a joint or sole managing conservator.



HB 3203

Effective September 1, 2021

Family Code Sections 153.317(a) Amended; Sections 153.3171, 231.1211, New Language

Modification to the Standard Possession Order. For weekends that follow student holiday or teacher in service days that fall on a Monday, possession now ends 8 a.m. Tuesday.



SB 286

Effective September 1, 2021

Family Code Sections 8.062, 154.0655, 154.066(c) New Language; Section 154.125, 154.129 Amended; Section 156.401(c-1) New Language; Sections 157.005(b), 157.263(a), 157.263(b), 157.263(b-1) Amended; Sections 157.263(b-2), 157.263(b-3) New Language; Sections 159.605(b) and 234.007(a) Amended

For support orders, courts may not consider incarceration as intentional unemployment or underemployment but a child support obligor who is incarcerated in jail or prison for over 180 days qualifies as a material and substantial change of circumstances.

Requires all parties under temporary or final orders to pay child support to pay through the state disbursement unit, including employers who are court-ordered to withhold child support from the obligor's income.



SB 1936

Effective September 1, 2021

Family Code Section 153.317(a) Amended; Sections 153.3171, 231.1211 New Language

The standard possession order for parents residing less than 50 miles apart must alter the standard possession order to the alternative beginnings and endings of possession under Section 153.317 unless the possessory conservator declines in writing or through an oral statement in court, the court is limiting, denying, or restricting the possessory conservator's possession, or the possession times are not in the best interest of the child due to the distance between the parents residences or lack of exercise of possession by the possessory conservator.



Youth Aging Out of Care

HB 700

Effective September 1, 2021

Family Code Sections 264.121(a),(a-2), and (a-6) Amended

Requires DFPS to address barriers to participation in the Preparation for Adult Living (PAL) Program for youth with disabilities by making and documenting accommodations.

Like skills training for youth older than 17 must include lessons related to identification documents and how they may be used.

Requires DFPS, in coordination with the Texas Higher Education Coordinating Board, must establish a workgroup to develop a plan to allow youth in foster care to receive college credit for completing the PAL Program. The bill requires certain membership in the workgroup and requires a report be issued by November 1, 2022. *This provision expires September 1, 2023.*

HB 700, Continued

Family Code Sections 264.121 (e-1) and (g) Amended; 264.121(a-7) and (e-4) New Language

DFPS must ensure youth 14 and older have an email address where they may receive encrypted copies of personal documents and records.

Adds a Medicaid card or proof of insurance to the documents DFPS is required to provide to youth. Requires the DFPS caseworker to inform the youth of the documents they are required to receive and to assist the youth with a plan for keeping the documents in a safe place.

For youth 17 or older who take medications, DFPS must ensure the youth's transition plan includes a program supervised by a health care professional to assist the youth with independently managing their medication.



HB 700, Continued

Texas Family Code Section 264.1214 New Language

For youth entering extended foster care, the DFPS caseworker must complete any necessary transitional housing paperwork six months before the youth turns 18 and must review the qualifications for housing 90 days before the youth's 18th birthday.

DFPS must waive background checks for substitute caregivers for youth in extended foster care.

A foster home that prohibits a youth from living there after they turn 18 must notify the caseworker 90 days before the youth's 18 birthday. Congregate care facilities must notify the caseworker six months before the youth's 18th birthday or as soon as possible if the youth is placed there within six months of their 18th birthday. After receiving this notice, the caseworker must communicate with the youth and document the communication.

DFPS must assist youth in Supervised Independent Living programs to develop a rental history by allowing them to co-sign for the lease on their housing.

DFPS must develop a protocol to prevent a youth from aging out of residential treatment center and implement the protocol when the youth turns 17 years old.



HB 1062

Effective September 1, 2021

Government Code Section 437.302 Amended and New Language

Allows 17-year-old youth in DFPS conservatorship to serve in the Texas State Guard with the consent of a representative of DFPS or other legal entity.



SB 1059

Effective September 1, 2021

Human Resources Code Section 32.0247(e)-(f) Amended; Section 32.024715 New Language

Requires that HHSC and DFPS create a streamlined process to determine if a youth formerly in foster care is eligible for Medicaid. The process must include automatic enrollment and recertification for an appropriate Medicaid program and prevent unnecessary interruption in the Medicaid benefits.

If recertification is required under federal law:

- HHSC application and recertification process must not require state-residence certification unless HHSC determines that the youth received Medicaid outside Texas.
- If the federal law requires a youth verify state residency, HHSC must allow the youth to attest to residency without providing additional documentation or evidence.

SB 1524

Effective January 1, 2022

Tax Code Section 151.4292 New Language

Allows tax refunds for persons who employ apprentices and allows up to six apprentices if at least half are youth currently or formerly in care in transition to independent living. The Texas Workforce Commission and the Comptroller of Public Accounts are required to implement this Act only if the legislature appropriates money specifically for that purpose.



SB 1896 (Congregate Care)

Family Code Sections 264.117 New Language

DFPS and SSCC's must collaborate with local government and faith based and community-based organizations to examine the feasibility of designing a volunteer mentor program for children in congregate care settings and report its findings to the legislature by December 31, 2022.

Expires September 1, 2023.

SB 1896 (Miscellaneous)

HHSC and the DFPS must jointly evaluate the Consolidated Appropriations Act to determine methods for maximizing the receipt of federal funds to provide transition planning to adulthood for youth in foster care and additional services for youth and young adults in extended foster care.

SB 2054

Effective September 1, 2021

Transportation Code Section 521.4265 Amended; Section 521.68 New Language

Requires the Texas Workforce Commission (TWC) to pay for driver's education courses that are required for obtaining a driver's license for youth currently and formerly in foster care up to age 26. TWC must establish a process for youth to apply for fee payment.



Dual Status and Juvenile Law

HB 80

Effective September 1, 2021

Code of Criminal Procedure Article 45.041 New Language

When imposing fines or costs, judges and justices cannot require children and youth in the conservatorship of DFPS, or on those in extended foster care, to pay the fines and costs.

In lieu of paying fines and costs, the judge may require community service instead.

Applies to a sentencing proceeding that commences before, on, or after September 1, 2021.

HB 1401

Effective September 1, 2021

Family Code Section 58.256(a-1) New Language; Section 58.258(c) Amended

Allows for an application to seal records to be filed by secure electronic means authorized under Rule 21, Texas Rules of Civil Procedure.



HB 1664

Effective September 1, 2021

Human Resources Code Section 32.0264(b-1) New Language

If a child in juvenile facility is hospitalized, HHSC must reinstate the child's eligibility for medical assistance during the inpatient stay.

If the Health and Human Services Commission determines that a memorandum of understanding between the commission and the Texas Juvenile Justice Department or the adoption of policies or procedures is necessary for implementation of that provision, the commission may delay implementing that provision until the earlier of: (1) the date any necessary memorandum of understanding, policies, and procedures are adopted; or (2) March 1, 2022.

HB 2669

Effective Date September 1, 2021

Code of Criminal Procedure Sections 44.2811, 45.0217 Amended

Creates confidentiality of records for a fine only misdemeanor that is committed by a child and that is appealed, unless it is a traffic offense.



HB 3165

Effective June 4, 2021

Family Code Section 65.003 Amended

Creates an affirmative defense to truant conduct if the absence was due to abuse as defined by Family Code Section 261.001.



HB 3774

Effective September 1, 2021

Family Code Sections 51.02 New Language; Sections 51.04(h), 51.0414(a), 107.004(d)-(e) Amended

Defines a “Dual Status Child” as a child who:

- has been referred to the juvenile justice system; AND
- is in the TMC of DFPS; the subject of a case for which FBSS has been offered or provided by DFPS; an alleged victim of abuse or neglect in an open child protective investigation; or a victim in a case in which, after an investigation, DFPS concluded there was reason to believe the child was abused or neglected.



SB 2049

Effective September 1, 2021

Family Code Section 51.11 (a), (d), and (e) New Language; Sections 54.01(c), 54.02(e), 54.04(b), 54.05(e), 54.11(d) Amended; Section 107.011(e) New Language

Allows a juvenile court to appoint a Guardian ad Litem (GAL) appointed under Chapter 107 to be a GAL in the juvenile case.

The GAL may not investigate any charges regarding the juvenile court or offer testimony concerning the guilt or innocence of a dual status child.

Human Trafficking

HB 1540

Effective September 1, 2021

Alcoholic Beverages Code, Code of Criminal Procedure, Civil Practice and Remedies Code, Education Code Government Code, Occupations Code, Health and Safety Code, Human Services Code, Property Code Amended

- Adds general residential operations and residential treatment centers to the list of places that qualify as a child safety zone under the Code of Criminal Procedure and adds enhanced penalties for certain crimes such as delivery of a controlled substance.
- Requires general residential operations and residential treatment centers to have "No Trespassing" signs in English and Spanish, citing penal code provisions at boundaries and access points.
- Defines coercion as it applies to Human Trafficking in the Penal Code.
- Raises human trafficking to a first-degree felony if the trafficked person is recruited from a residential treatment center.



HB 2633

Effective September 1, 2021

Family Code Sections 54.04012(b) Amended; Section 264.004(d) New Language

Government Code Sections 405.023(b) Amended; Sections 405.024, 2054.252(h) and (i) New Language

Health and Safety Code Sections 50.0151 - 50.0157 New Language

Human Services Code Section 152.0017 Amended

Transportation Code Sections 502.416, 504.675, 521.013, 522.0296 New Language

Creates a trafficked person program account that is funded by voluntary driver's license contributions, specialty license plate fees, donations, grants, and other funds to support human trafficking victims. Grant funds are to be used by DFPS for dedicated housing and treatment facilities provided to human trafficking victims.



Education

HB 159

Effective September 1, 2021

Education Code Sections 21.001, 21.004, 21.0443, 21.047, 21.451 Amended

Defines “student with a disability.” Adds training requirements for educators related to expanding knowledge of students with disabilities and competence in proactive instructional planning techniques.

Adds the ability to create an inclusive environment for foster parent involvement as one of the qualifications for principal or superintendent.



HB 725

Effective Date June 4, 2021

Education Code Section 29.153(b) Amended

A child at least 3 years old who has ever been in foster care or in Texas or another state or territory (if the child resides in Texas) is allowed early enrollment in pre-kindergarten.



HB 785

Effective Date June 4, 2021

Education Code Section 29.005(h) New Language; Section 37.0021(d) Amended; Section 37.004(b-1) New Language

Requires a school district's Admission, Review, and Dismissal (ARD) Committee to review a student's Behavioral Improvement Plan at least annually to account for changes in circumstances.

Requires written notice to parents for each use of restraint on a student and information about the restraint including the circumstances and details surrounding its use.

SB 89

Effective June 7, 2021

Education Code Section 29.0052 New Language

Requires school districts to prepare supplements to written statements (required in Section 29.005) for each child in the district's special education program by May 1, 2022. The supplement must state for the 2019-2020 or 2020-2021 school year, if the child's full evaluations (under Section 29.004) or programs were completed (if applicable); if the program was interrupted, reduced, delayed, suspended, or discontinued; and if compensatory education services are appropriate. This supplement is not necessary if the written statement already includes the necessary information. Sections 29.005(f) and 29.0051 do not apply to this supplement.

Expires September 1, 2023



SB 279

Effective June 14, 2021

Education Code Sections 38.353, 51.91941 New Language

Requires public school student ID cards to have the National Suicide Prevention Lifeline and Crisis Text Line information for students in grade six or higher. The cards may have contact information for the campus police department or security, the campus or local health clinic, or a local suicide prevention hotline.



SB 1716

Effective June 18, 2021

Education Code Sections 29.041 - 29.050 New Language

TEA, by rule must establish and administer supplemental special education services and instructional materials program for enrolled students who are eligible for compensatory education. Through a grant and application process, eligible students can be assigned an account to purchase services and materials.

SB 1896 (RTC Education and Treatment)

Human Resources Code Sections 42.256 - 42.260 New Language

DFPS must develop a strategic plan for improving the provision of educational services to children placed in a general residential operation, report to the Texas Education Agency (TEA) the educational outcomes for children placed in a general residential operation, and DFPS and the TEA must annually evaluate the educational outcomes for children placed in a general residential operation and adopt strategies and policies to improve the outcomes and standards.

Domestic Violence and Protective Orders

HB 39

Effective September 1, 2021

Family Code Sections 85.005, 85.006, 85,026 Amended; Section 85.025(d) New Language; Section 86.0011 Amended

Code of Criminal Procedure Articles 7B.001, 7B.003, 7B.007, 56A.052 Amended

Penal Code Section 25.07 Amended

- Allows an agreed protective order (PO) to be civilly and criminally enforceable regardless of whether the court makes findings required for a protective order.
- Any adult, not just a parent, may file for a PO on behalf of a child victim of certain offenses.
- Allows an attorney for the state to file a PO regarding victims once an offender has been convicted.
 - Restricts the attorney for the state from filing if the victim objects to the PO unless the victim is a child.
- Allows PO for life for registered sex offenders for victims of certain sexual offenses.
- A parent may not file to rescind an order if they are the offender.



HB 39, Continued

If a person subject to a PO is released from incarceration after the date the PO expires, or the order would expire within one year of release, the order automatically expires on the first anniversary of the date of the person's release if the person's sentence was five years or more and the second anniversary of their release if the sentence was less than five years.

Effective date depends on when the PO was approved, when the respondent receives service, when the application was filed, and when the judgement of conviction was entered.

SB 798

Effective September 1, 2021

Health and Safety Code Section 191.00491 New Language

**Transportation Code Section 521.1016 New Language; Sections 521.1811,
521.4265(b)-(c) Amended**

Waives the fee for obtaining a certified copy of a birth record, personal identification certificate, or a driver's license for victims of dating or family violence and children of victims.



HB 1172

Effective Date September 1, 2021

Code of Criminal Procedure Sections 15.051(a) Amended; Section 15.051(b)-(c) Repealed; Section 56A.251(a) Amended

Requires a peace officer to offer a sexual assault victim the opportunity to have a trained sexual assault advocate, crime victim liaison, or counselor present during a law enforcement interview.



Drug and Alcohol Recovery

HB 707

Effective September 1, 2021

No code citation

Health and Human Services Commission (HHSC) must conduct a study to evaluate the current opportunities, challenges, and needs to expand recovery housing in this state. The study must include interviews with stakeholders and experts in recovery housing that represent both rural and urban areas of Texas. HHSC must prepare and submit a related report to the legislature by December 1, 2022.

Expires September 1, 2023

HB 454

Effective September 1, 2021

Government Code Section 130.004 New Language

Authorizes commissioner's courts to establish a juvenile family drug court program focused on the rehabilitation of an individual who is suspected of substance abuse by DFPS and who resides with a child who is the subject of a juvenile case.

Counties that create such courts must explore court improvement project money as well as state and federal matching funds to finance the court.



Foster Care Licensing and Kinship

HB 1387

Effective September 1, 2021

Human Resources Code Section 42.042(e-1) Amended

Allows foster parents to store firearms and ammunition in the same locked location without a trigger locking device on the firearm.



HB 1927

Effective September 1, 2021

Human Resources Code Section 42.042(e-2) Amended

DFPS may not prohibit the foster parent from transporting a child in a vehicle where a handgun is present if the handgun is in the possession and control of the foster parent and the foster parent is not otherwise prohibited by law from carrying a handgun.



SB 1896 (Suicide Prevention)

Human Resources Code Section 42.0433 New Language

The HHSC Commissioner must adopt a model suicide prevention, intervention, and postvention policy for use by a residential child-care facility and each residential child-care facility must adopt a model policy or another policy approved by the Commissioner. HHSC must provide to a residential child-care facility any technical assistance necessary to adopt or implement a suicide prevention, intervention, and postvention policy.

SB 1896 (Placement and Capacity)

Human Resources Code Sections 42.0538 and 42.0583 New Language

HHSC must allow a child-placing agency to issue a provisional license for a kinship provider who meets the basic safety requirements provided by commission rule. The kinship provider issued a provisional license under this section must complete all licensing requirements within the time provided by rule.

DFPS must use data analytics collected regarding residential child-care providers, including general residential operations providing treatment services to young adults with emotional disorders, to develop an Early Warning System (EWS) to identify at-risk providers most in need of technical support and to promote corrective actions and minimize standards violations. The EWS must distinguish between different levels of risk using a multi-point severity scale and make information regarding the severity scale available to the public through the DFPS website.



SB 1896 (RTC Education and Treatment)

Human Resources Code Sections 42.256 - 42.260 New Language

A General Residential Operation (GRO) that contracts with DFPS to provide residential care for children in foster care must submit information on the GRO's treatment model to DFPS and the operation must annually assess the overall effectiveness of the model.

The treatment model must include the manner in which treatment goals will be individualized and identified for each child, the method the operation will use to measure the effectiveness of each treatment goal for the child, the actions the operation will take if the treatment goals are not met, and the method the operation will use to monitor and evaluate the effectiveness of the treatment model.

SB 1896 (RTC Education and Treatment)

A GRO that considers accepting a child's placement with the GRO must evaluate whether the child meets the operation's admission criteria, whether the child would benefit from the treatment model, and whether the GRO has the staff and resources to meet the child's needs considering the other children placed at the GRO and their needs.

If DFPS or an SSCC contracts with a GRO providing treatment services to place children with the operation before the operation is licensed, the contract must limit the number of children that may be placed each month and limit the number of children with a specialized, intense, or intense plus level of service.

A GRO must develop a transition plan for each child who has been placed at the GRO for longer than six months.



SB 1896 (Other Provisions)

Government Code Section 2155.089(c) Amended

Excepts a child-specific contract entered into by DFPS for a child without placement from vendor review requirements.

No Code Citation

HHSC must adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes by January 1, 2024.

Placement Capacity

SB 263

Effective September 1, 2021

Human Resources Code Sections 31.0041(a) and 31.0324 Amended

Relative caretakers of a dependent child may receive supplemental financial assistance and become protective payees for financial assistance payments. Qualifying relatives must be a grandparent, aunt, uncle, sister, or brother of the child as defined in Section 31.002 and must be 25 years or older, living with the child.



SB 1896 (Placement Capacity)

Family Code Section 264.107(g) Amended

In addition to employees of DFPS, an employee of a Single Source Continuum Contractor (SSCC) may provide emergency temporary care for a child without placement.

Family Code Sections 264.1071 Amended

DFPS may not allow a child to stay overnight in a DFPS office.



SB 1896 (Placement Capacity)

Family Code Sections 264.1073 Amended

Expands the utilization of treatment foster care by requiring DFPS and SSCCs to:

- Allow single parents to qualify as treatment foster care providers.
- Expanded eligibility to children to 10 years old or older.
- Prepare a plan for a subsequent placement no later than 30 days after placement in treatment foster care to ease transition to a less restrictive setting.
- Extend the length of time child can be placed in treatment foster care.

SB 1896 (Placement Capacity)

Family Code Section 264.1261(b-1)-(b-4) New Language

HHSC in collaboration with DFPS and all SSCC's must develop a plan to increase the placement capacity in each catchment area in the state with the goal of eliminating the need to place children outside their community.

The plan must evaluate the best methods for meeting capacity shortages including contracting for additional capacity at residential treatment centers (RTC), inpatient and outpatient mental health facilities for crisis intervention for children with severe behavioral or mental health needs and make recommendations to DFPS regarding contracting for additional capacity.

Inpatient or outpatient facilities must discharge the child within 72 hours once it is determined it is not medically necessary to place the child there. The plan must have contingencies if a facility is placed on probation and DFPS and each SSCC must contract with facilities for reserve capacity.

Repeals Sections 264.1261(a) and (b) which provided prior definitions of Community Based Care (CBC).



SB 1896 (Placement Capacity)

Government Code Sections 533.00521 - 533.00522 New Language

Health and Human Services Commission (HHSC) must annually evaluate the use of benefits under the Medicaid program in the STAR Health program offered to children in foster care and provide recommendations to DFPS and each SSCC to better coordinate the provision of health care and use of those benefits for children in foster care.



SB 1896 (Placement Capacity)

HHSC must identify options to obtain federal matching funds to pay for a safe home-like or community-based residential setting for certain children in the conservatorship of the DFPS

- Children who are diagnosed as having a serious behavioral or mental health condition that requires intensive treatment.
- Children who are victims of serious abuse or serious neglect, and for whom a traditional substitute care placement contracted for or purchased by DFPS is not available or would further denigrate the child's behavioral or mental health condition.
- Children for whom the DFPS determines a safe home-like or community-based residential placement could stabilize their behavioral or mental health condition in order to return them to a traditional substitute care placement.



SB 1896 (Placement Capacity)

Human Resources Code Section 40.081 New Language

Instructs DFPS to develop to the greatest extent possible capacity for placement that is eligible for federal reimbursement under the Family First Prevention Services Act (FFPSA) including facilities specializing in providing prenatal, postpartum, or parenting support for youth, those providing high-quality residential care and supportive services to children and youth who are at risk of human trafficking, those providing supervised independent living for young adults, those offering residential family-based substance abuse treatment, and those serving as a qualified residential treatment program (QRTP).



SB 1896 (Placement Capacity)

No Code Citation

DFPS must study extending permanency care assistance benefits to individuals who are not relatives of a foster child and who do not have a longstanding and significant relationship with the foster child before the child enters foster care, assess the potential impact and favorable permanency outcomes for children who might otherwise remain in foster care for long periods or have managing conservatorship of the child transferred without any benefits to the caregiver.

DFPS must submit a report to the legislature on the results of the study and make recommendations for further action based on the study by December 31, 2022

This section expires September 1, 2023.



DFPS Operations

HB 2374

Effective September 1, 2021

Human Services Code Section 40.045 New Language

Requires DFPS to conduct an efficiency audit by an independent auditor every four years beginning in 2022. The Legislative Budget Board must establish the scope of the audit and the areas of investigation. Auditor must report the results to the Governor, Legislative Budget Board, state auditor, and the chairs of the House Human Services Committee and the Senate Health and Human Services Committee.



SB 452

Effective September 1, 2021

Family Code Sections 264.201(d), 265.004(a-1) Amended; Sections 261.151(a) Repealed; Section 265.151(b) and (c) Amended; Section 265.151(d) New Language; Sections 265.152, 265.153, 265.154 Amended

Changes “Parenting Education” to “Evidence-Based Programs and Practices” for Subchapter D and Section 265.151 and requires evidence-based program and practices to be associated with a Texas or national organization, a higher education institution, or a national or state public health institute and adds a section defining evidence-informed programs and practices.

Replaces “parenting education” with “prevention and early intervention programs and practices” for Section 265.152. Replaces “parenting skills” with “increased protective factors.”



SB 642

Effective June 14, 2021

Family Code Sections 262.351(1) Amended; Section 262.351(1-a) and (1-b) New Language; Section 262.353 New Language

Without an allegation of child abuse or neglect, HHSC may not require DFPS to conduct a child abuse or neglect investigation before allowing the child to participate in the relinquishment avoidance program. Mental or behavioral health authorities may refer the child to the program without first contacting DFPS.

HHSC and DFPS must jointly adopt guidance for providers and families as well as protocols for families to get the child access mental health services.



SB 910

Effective September 1, 2021

Family Code Section 264.1691 New Language;

Family Code Section 264.169, Human Resources Code Section 40.0581(f) Repealed

Defines “family preservation service” as including an FFPSA service to the family of a child who is a foster care candidate or a pregnant or parenting foster youth, in-home support services and non-recurring financial support, and services for self-sufficiency from the child welfare system.

Requires DFPS to make a list of family preservation service options, including contracting and using a competitive bidding process to gain service providers. To develop options, DFPS must examine existing DFPS family-based safety services and make recommendations for incorporating them into contracted service providers and consider several factors when establishing these providers and services. DFPS may enter any contracts necessary to comply.

DFPS must submit options and recommendations by October 1, 2022.

Expires August 31, 2023.



SB 1575

Effective September 1, 2021

Family Code Section 264.1077 New Language

The Supreme Court of Texas Children's Commission, in collaboration with DFPS must establish and oversee a work group to examine the oversight of and best practices related to Residential Treatment Center (RTC) placements, including placements in QRTPS. The work group must consider topics and changes to current practices including statutorily required judicial review of residential treatment center placements and must submit a report to the legislature regarding the findings and recommendations from the work group by October 1, 2022.

This section expires September 1, 2023.



SB 1578

Effective September 1, 2021

Family Code Section 261.30171 New Language

DFPS, with assistance from Supreme Court of Texas Children's Commission, must evaluate DFPS's use of the Forensic Assessment Center Network and develop joint recommendations to improve evaluation agreements and best practices for using assessments provided by the network in connection with abuse and neglect investigations. DFPS must submit a report including recommendations to the legislature by September 1, 2022.

SB 1896 (DFPS Operations)

Human Resources Code Section 42.026 New Language

HHSC must make the child-care licensing division's searchable database accessible to HHSC and DFPS investigators and DFPS must make DFPS's searchable database accessible to HHSC and DFPS investigators.

No Code Citation

DFPS must transition FBSS to evidence-based programs under FFPSA, develop an implementation plan for the transition of services, and develop community referrals to existing prevention and early intervention programs by January 1, 2025.

Community Based Care

SB 1896 (Community Based Care)

Family Code Section 264.152(4) Amended

Defines CBC as the provision of child welfare services, including direct case management, in accordance with state and federal child welfare goals by a community-based nonprofit or a local governmental entity under a contract to prevent entry into foster care, reunify and preserve families, ensure child safety, permanency, and well-being, and reduce future referrals of children or parents to DFPS.

Family Code Section 264.154 Amended

Requires the majority of a non-profit SSCC's board must reside in Texas. DFPS must request local stakeholders provide any necessary information about a catchment area that would assist DFPS in preparing requests for providing CBC in the area and selecting an SSCC.



SB 1896 (Community Based Care)

Family Code Section 264.155 Amended

A contract with an SSCC must be consistent with the requirements of applicable law and may only include terms authorized by the laws or rules of Texas. An SSCC may apply to DFPS for a waiver from any statutory and regulatory requirement to increase innovation and flexibility for achieving contractual performance outcomes.



SB 1896 (Community Based Care)

Family Code Section 264.157(a)-(c) Amended

No later than the last day of the state fiscal biennium, DFPS must identify areas where they will implement CBC and following implementation retain an independent entity to evaluate the implementation process and the SSCC in each catchment area.

DFPS must accept and evaluate unsolicited proposals from entities based in Texas to provide CBC services in a geographic area where DFPS has not implemented CBC.

DFPS may change the geographic boundaries of catchment areas to enable satisfactory unsolicited proposals for CBC services to be accepted and implemented.



SB 1896 (Community Based Care)

Family Code Section 264.158(d) New Language

A SSCC may implement its own procedures to execute DFPS's statutory duties the contractor assumes and is not required to follow DFPS's procedures to execute the duties.

Family Code Section 264.159 Amended

The council created by DFPS to develop protocols for the transfer of data from DFPS to SSCCs must develop protocols for the access, management, and security of data shared with an independent entity retained to conduct evaluations. The protocols must ensure the entity has full, unrestricted access to all relevant data necessary to perform an evaluation. The council must consist of SSCCs with active contracts and DFPS employees who provide data, legal, information technology, and child protective services. The council must meet at least quarterly during each calendar year.



SB 1896 (Community Based Care)

Family Code Sections 264.171 New Language

Joint Legislative Oversight Commission on Community Based Care must consist of three members of the senate appointed by the Lieutenant Governor and three members of the House of Representatives appointed by the Speaker of the House.

The committee must monitor and report to the legislature the funding of community-based care, the performance and outcomes of community-based care statewide and by region, statutory or regulatory barriers to the successful implementation of community-based care, and other challenges to the successful implementation of community-based care.

By January 1 of each odd-numbered year, the committee must submit a written report of the committee's findings and recommendations to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and each member of the standing committees of the Senate and House of Representatives having primary jurisdiction over child welfare issues.



SB 1896 (Community Based Care)

Family Code Section 264.172 New Language

Creates the Office of Community Base Care Transition. The office is independent of DFPS but attached them administratively. The director of the office is appointed by the Governor, reports directly to the governor and serves at the pleasure of the Governor. The office must assess catchment areas where CBC services may be implemented, develop a plan for implementing CBC in each catchment area in this state, including the order in which CBC will be implemented in each catchment area, a timeline for implementation, and an evaluation of CBC providers.

The office must contract, on behalf of DFPS, with CBC providers to provide services in each catchment area, measure contract performance of CBC providers, and provide contract oversight of CBC providers.



SB 1896 (Community Based Care)

Family Code Section 264.172 New Language

The Office of CBC Transition must report outcomes of CBC providers and identify the employees and other resources to be transferred to the CBC provider to provide the necessary implementation, case management, operational, and administrative functions and outline the methodology for determining the employees and resources to be transferred.

The office must create a risk-sharing funding model that strategically and explicitly balances financial risk between Texas and the CBC provider and mitigates the financial effects of significant unforeseen changes in the CBC provider's duties or the population of the region it serves and require the annual review and adjustment of the funding based on updated cost and finance methodologies, including changes in policy, foster care rates, and regional service usage.



SB 1896 (Community Based Care)

Family Code Section 264.172 New Language

The office must report quarterly to the legislature at least once every quarter regarding implementation of CBC and office will cease to exist once CBC is implemented statewide.

No Code Citation

The Governor must appoint the director of the Office of Community-Based Care Transition by October 15, 2021, and DFPS must transfer all money, contracts, leases, property, and obligations related to the powers and duties of the Office of Community-Based Care Transition to that office as soon as practicable.

The Office of Community-Based Care Transition, DFPS, and HHSC are required to implement this Act only if the legislature appropriates money specifically for that purpose.



Questions?

Contact

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