



CSSB 2091

The Child Trauma Reduction Act

Purpose

The Committee Substitute for Senate Bill 2091 seeks to clarify standards in the Family Code that DFPS and the courts rely upon when making life-altering decisions concerning the removal of children into foster care and termination of parental rights. Research has shown that children suffer trauma when they are separated from their parents and placed into foster care—even for a short time. Since 2009, the number of Texas children removed into foster care has increased by nearly 71 percent. These removals are primarily driven by findings of “neglectful supervision,” which are often rooted in issues of poverty.

SB 2091 aims to reduce the harm caused to children by unnecessary separation from their parents, prioritize support for families over removal, allow children in foster care to either return home or be adopted more quickly, and protect the fundamental rights of families against unconstitutional government intervention. The committee substitute incorporates feedback provided by a number of stakeholders including the Department of Family and Protective Services and the Children’s Commission.

Analysis

Sections 1, 3, and 10 of the bill address vagueness in the statutory definition of neglect that can lead to unwarranted investigations and removals by CPS. These sections prohibit DFPS from taking custody of a child or seeking termination of parental rights based solely on evidence that the parents allowed the child to engage in certain independent activities appropriate for the child’s age and development. The committee substitute amends language in Section 1 to clarify that such activities are not sufficient to meet the clear and convincing evidence standard required for termination of parental rights. It also adds language in all three sections stating that parents are expected to take reasonable precautionary measures to provide for the safety of their children before allowing them to engage in the independent activities listed.

Section 2 requires all petitions or motions filed by DFPS seeking the removal of a child or termination of parental

rights to comply with Chapter 10, Civil Practices and Remedies Code, and Rule 13, Texas Rules of Civil Procedure. These two standards mandate that any civil pleading or motion include only those allegations or factual contentions that have, or likely will have, evidentiary support. This change was recommended by the CPS Pleading Practice Workgroup commissioned by the 85th Legislature.

Section 4 of the committee substitute defines the reasonable efforts that a governmental entity is required to make to prevent or eliminate the need to remove a child from the child’s home. In addition to the existing requirements that the actions are consistent with the circumstances and provide for the safety of the child, the committee substitute requires that the governmental entity weigh the danger to the physical health or safety of the child against the emotional distress that may result from disrupting the parent-child relationship.

Sections 5, 6, 7, 8, 9, and 11 incorporate the factors related to determining reasonable efforts, including the balancing test, detailed in **Section 4**.

Section 11 of the bill prioritizes the placement of a child who must be removed from the custody of one parent with the parent who did not cause harm to the child (the “non-offending parent”) when deciding placement. Under this section, the court is required to make individualized findings with respect to each parent before ordering removal. This protects the rights of a parent who did not cause the danger or harm to the child, and who may be a victim themselves, and reduces the risk of trauma to the child by prioritizing placement in a familiar setting. Section 11 provides additional guidance for placement of the child with a relative or other individual when a person who is otherwise entitled to possession of the child cannot be located or if placement of the child with such person presents a continuing danger to the health or safety of the child, including the danger that the child would be a victim of trafficking.

Section 11 also provides a process for DFPS to notify the court and request a hearing when a person otherwise

entitled to possession was not located before the adversary hearing later issues a written request for possession of the child.

Finally, **Section 11** clarifies the evidentiary standard of proof that DFPS must meet at the full adversary hearing when removing a child into DFPS custody. This section deletes the vague “person of ordinary prudence and caution” standard and replaces it with “preponderance of the evidence,” which is the default evidentiary standard for any action taken under the Family Code.

Section 12 of the bill promotes reunification of a child with his or her family by requiring that the court order the return of the child at the end of each permanency hearing unless it finds that there is a continuing danger to the physical health or safety of the child and returning the child to the child’s parent would be contrary to the welfare of the child. The bill does not prohibit the court from retaining jurisdiction over the case or issuing temporary orders for the monitored return of the child. This allows families to continue to receive support necessary to ensure successful reunification.

Section 13 requires that a trial on the merits be brought to final resolution within 90 days after the trial has commenced. A court is permitted to grant one 30-day extension of the trial under extraordinary circumstances. If the court does not render a final order as required by this section, a party may file a mandamus proceeding. This section promotes permanency for children by addressing the problem of trials dragging on for months or even years beyond the statutorily required 12-month time limit for resolution of parental termination suits.

Section 14 is a non-substantive change requested by the Children’s Commission to clear up confusion that resulted

from changes enacted by HB 7 during the 85th Legislature regarding the use of monitored return and the applicable timelines. The re-codification in this section will place the limitation in the proper location in statute and facilitate proper application by the courts.

Section 15 promotes timely permanency by requiring a court make additional findings that termination of parental rights is not possible or is not in the child’s best interests before awarding the department permanent managing conservatorship. Under Texas law, a child is not free for adoption until parental rights have been terminated. These additional findings will allow more children who cannot be safely returned home achieve permanency through adoption.

Section 16 addresses concerns raised by counties regarding the re-establishment of indigence for appeals. This language would require a party to sign a notice of appeal of a final order and provide certain contact information to allow the court to determine if the party is still eligible for a court-appointed attorney.

Section 17 addresses the current lack of due process protections when courts order families to comply with services requested by DFPS under Section 264.203. This section fixes this problem by (1) establishing constitutional processes for courts to order families to comply with services requested by the department, (2) eliminating the ability of a court to order services for unprovable future events, (3) requiring the court to order specific services that are narrowly tailored to alleviating the effects of abuse or neglect that has occurred or reducing a specific continuing danger to the child, (4) setting clear time limits for services, and (5) allowing a party to petition the court for termination of the order at any time. ★

ABOUT THE AUTHOR



Andrew C. Brown, J.D., is the director of the Center for Families & Children at the Texas Public Policy Foundation.

Andrew has dedicated his career to serving vulnerable children and strengthening families through community-focused, liberty-minded solutions. As an attorney, he has represented children in the child welfare system, advocated for the rights of parents, and helped build families through domestic and international adoption.

Andrew earned his B.A. *magna cum laude* in political science from Baylor University and his J.D. from Southern Methodist University Dedman School of Law. He is licensed to practice law in Texas and Virginia. His work on international adoption law and other child welfare issues has been published in leading legal journals and respected media outlets.

