SUBJECT: Limiting consideration of race or ethnicity in adoptions and foster care

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 7 ayes — Goodman, Cook, H. Cuellar, De La Garza, Naishtat, Puente, Van de Putte

0 nays

2 absent — Brady, Williamson

SENATE VOTE: On final passage, April 27 — voice vote

WITNESSES: For — Winifred Conlon, Texas State Foster Parents Inc.; Cheryl Wilson.

Against — None

On — Howard Baldwin, Jr., Department of Protective and Regulatory Services

BACKGROUND: In 1993 the Legislature prohibited the Department of Protective and Regulatory Service (PRS) and county welfare units and adoption agencies from denying adoption or foster care placement based solely on the race or ethnicity of the child or the prospective adoptive or foster parents. The provision was contained in HB 196 by Conley, 73rd Legislature.

DIGEST: SB 1487 would prohibit PRS and certain other child placement entities from making an adoption or foster care placement decision based on the presumption that placing a child in a family of the same race or ethnicity as the race or ethnicity of the child is in the best interest of the child. Agencies could not deny, delay or prohibit the adoption or foster care placement of a child because of agency attempts to locate a family of a particular race or ethnicity.

A state or county employee who violated these prohibitions would be subject to immediate dismissal. A licensed child-placing agency that was found in violation would be subject to action by the licensing agency as a ground for revocation or suspension of the agency's license.

PRS would be prohibited from removing a child from foster care with a family that was not the same race or ethnicity as the child for the sole reason that continued foster care with that family could strengthen the emotional ties between the child and the family or increase the potential of the family's desire to adopt the child because of the amount of time the child and the family are together.

SB 1487 would specify that the prohibitions in the law would not prevent or limit the recruitment of minority families as adoptive or foster care families, but that recruitment could not be for the purpose of locating families to match the race or ethnicity of a child placed for adoption or foster care nor could it be a reason to delay placement of a child with an available family of a different race or ethnicity. PRS would be required to define by rule the term "delay."

A district court could enforce the provisions of the act by issuing an injunction, or other action, proceedings or remedy authorized by law. An applicant or petitioner who was granted relief would be entitled to the costs of the suit, including attorney's fees.

The bill would take effect September 1, 1995.

SUPPORTERS SAY:

This bill would clarify the Legislature's intent in limiting racial and ethnic considerations in adoption and foster home placements and would put enforcement "teeth" in the 1993 law. In 1993 the Legislature prohibited PRS and other child-placement entities from using race or ethnicity as a reason for denying or delaying an adoption or foster care placement. Yet, case workers have continued to ignore this prohibition. This bill is necessary to clamp down on practices that cause considerable heartbreak and harm.

Some evidence shows that even after enactment of HB 196 the agency has continued to discriminate on the basis of race and ethnicity in seeking adoptive families. The Fucile case in Houston and the Mullins case in Lexington, in which families wanted to adopt children of a different race, demonstrate PRS' continued policy of sometimes making race a primary factor in certain cases. PRS rules fail to address the intent of the Legislature regarding this issue.

SB 1487 would clarify that it is the Legislature's intent that PRS and other agencies not deny, delay or prohibit adoptions because they are trying to find a particular family that meets certain racial or ethnic requirements for the placement of a child. SB 1487 would create a needed enforcement tool by requiring the immediate firing of any state or county worker who violated these provisions.

In an ideal world, it may be best for a child to be placed with adoptive or foster parents of the same race or ethnic background. But a rigid adherence to this ideal is foolish if it blocks a child's chance to be adopted by a loving family. The cruelest thing is to let a child languish in foster care until the child is of an age as to be unadaptable. Statistics show that the longer children stay in foster care, the greater the odds against their being adopted. In addition, being in foster care for extended periods often leads to irreparable psychological damage to a child.

Children adopted by parents of a different race or ethnicity do not necessarily grow up ignorant of their own group's history and culture. Many adoptive parents are dedicated to integrating exposure to their child's cultural, ethnic and racial background into the family setting. They may do this by living in integrated neighborhoods, interacting with friends of the child's race and involving themselves in the child's cultural community.

Agency workers may not be entirely immune to racist sentiments, which can express themselves in agency policy unless the law specifically limits and penalizes the use of racial considerations in adoptions. Statistics show that is much more likely for an agency to make exceptions to allow white families to adopt minority children than to make exceptions to help minority families adopt.

OPPONENTS SAY:

While the Legislature may wish to articulate a policy that prohibits the denial or delay of placement of a child for adoption on the basis of race and ethnicity, the provisions of SB 1487 are too stringent and would go too far in punishing state-agency employees and adoption agencies. It is impossible to legislate an absolute when determining what may be in the "best interest of a child." The interests of children need to be considered on a case-by-case basis, with race and ethnic considerations being of legitimate concern in some cases, particularly when a child is older and more aware

of his or her racial or ethnic heritage. Even the Federal Multi-Ethnic Placement Act (MEPA), due to be fully implemented by the state in the later part of 1995, while prohibiting the presumption in favor of racial and ethnic considerations, would allow caseworkers to make independent determinations.

SB 1487 would tie the hands of caseworkers, PRS and county agencies to place a child in the best home environment, even if it meant waiting for an appropriate family. Better solutions are possible, such as setting a fixed time limit on how long agencies can wait to find a matching racial or ethnic family or working with PRS to develop rules that would meet the original intent of HB 196.

In a world without racism, transracial adoptions would be a minor issue. But in the race-sensitive society of today, transracial adoption could be a lifelong detriment to the self-esteem of a child raised by parents of another race. The real world is quite different from the protected environment of a home. The world is full of bigots, and minority children must be prepared for the racism and harassment they will undoubtedly experience in today's world. Children who are not well prepared for these situations may be permanently scarred. Consideration of ethnicity or race are legitimate factors in adoption or foster care placements.

The provision that would prohibit PRS from removing a child from foster care with a family that is of a different race or ethnicity than the child is too broad. Such a provision could raise a legal presumption in favor of the foster parents and make it more difficult for PRS to remove children from such a home when other factors may be involved. This provision could cost the state a great deal of money in protracted litigation when trying to remove children in a transracial family situation.