

SUBJECT: Revisions to the Family Code

COMMITTEE: Juvenile Justice — committee substitute recommended

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

0 nay

2 absent — Goodman, Williamson

SENATE VOTE: On final passage, May 4 — voice vote

WITNESSES: (*On House companion bill, HB 433*)

For — Shannon Noble, Texas Women’s Political Caucus

Against — David Allen Shelton, Texas Fathers Alliance

On — Robert L. Green, Jr., Primary Nurturing Fathers of Texas and the Texas Fathers Alliance; Jack Tucker, Texas Fathers Alliance; Richard LaVallo, Advocacy, Inc.

BACKGROUND: HB 655 by Goodman et al., a nonsubstantive revision of the Family Code, became law on April 20, 1995. While the code has been amended often it has not been substantively revised in its entirety since its codification by the 61st, 63rd and 66th Legislatures. Several recent reports have urged the Legislature to clarify the code and make its provisions consistent. These included the Texas Performance Review’s 1994 report *Gaining Ground, A Partnership for Independence* issued by the Comptroller’s Office and the report of the Joint Interim Committee on the Family Code.

DIGEST: CSSB 7 would substantively revise the Family Code (as it was recodified by HB 655). Major changes include provisions affecting dissolution of the marriage relationship, the parent-child relationship and suits affecting the parent-child relationship, increased enforcement of child support orders, and protection of the family. Major changes would include:

Marriage/Divorce. CSSB 7 would remove references to child support from sections in the code relating to spousal duties.

CSSB 7 would require divorce parties in their first pleading to include a standard statement that expresses the party's awareness of alternative dispute resolution. Suits relating to parent-child relationship, conservatorship, child support and parentage would also be required to file the statement.

A pending suit affecting a parent-child relationship would be transferred to the court in which the parent's marriage divorce or annulment was filed.

Consent for minors. A peace officer who has lawfully taken custody of a minor could consent to medical treatment if the peace officer has reasonable grounds to believe the minor is in need of medical treatment. A peace officer or an adult responsible for the care of a child in juvenile court and the examining physician, dentist or medical facility would be immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of their own acts of negligence.

Children could consent to medical, dental and psychological treatment of their own biological child.

The parent-child relationship. A jury trial could not be demanded in adoption suits.

Each party under the order to pay child support or entitled to possession or access of a child would be required to notify the other party directly (rather than through the court clerk) of certain changes within a specified time period. Changes would include address, mailing address, home telephone number, employment and work telephone number. Notice would be required 60 days prior to the change or at least five days after the party knows of an imminent change. Failure to notify the other party of a change could result in contempt of court, a fine of up to \$500 and a six month jail sentence.

Parties would be required to give written notice by registered or certified

mail. Parties in counties with a population of 2.8 million (Harris County) would be required to inform the court clerk.

In a termination of a parent-child relationship a guardian ad litem would have to be reported immediately after the filing of the petition but before the full adversary hearing. An associate judge would be required, and not permitted, to appoint an attorney ad litem in cases necessary to protect the interests of the child. CSSB 7 would specify the authority of an attorney ad litem.

A Texas court could issue a temporary order to protect a child in this state who is the subject of another state's jurisdiction, provided that the temporary order expires on the 91st day after it was entered or until the out of state court of competent jurisdiction issues its own order, whichever takes place first.

A court could not render an order that conditions the right of a conservator to possession of or access to a child on the payment of child support.

In custody suits, the court could require any party to the action to attend a four-hour course, conducted by a person or group approved by the court, regarding the effects of custody suits on the children involved. The court could set a reasonable fee for participation in the course. A person conducting the course would be required to have a background in parent education or family therapy. The bill would set out the information to be included in such courses. The bill would specify penalties, including holding a person in contempt of court for failing to attend the course if ordered to do so by the court. A court could not order a party to attend these courses if the other party to the suit was the Department of Protective and Regulatory Service (PRS), the attorney general or a party seeking a protective order.

The court would be authorized to recommend to the parties Alternative Dispute Resolution (ADR) to resolve suits affecting the parent-child relationship. An agreement to enter into ADR would require an agreement as to whether the panel's findings would be binding or not binding to the suit. If the arbitration was binding, the court would enter an order reflecting the arbitrator's award unless the judge determines in a non-jury

hearing that such a finding is not in the child's best interest. The burden of proof at such hearing would be on the party who lost at the arbitration level.

A court by the parties' request or on its own motion could order mediation in suits affecting the parent-child relationship. A mediation settlement agreement would be binding on the parties if the agreement provided that the agreement was not subject to revocation.

If a party to a pending custody suit made a report alleging child abuse by another party to the suit that the reporting party knew was false, the court would be required to classify the report as knowingly false. Such false reporting would be admissible as evidence in a custody suit between the parties.

Unless limited by a court order, a parent appointed as a conservator of a child would have the right to consent for the child to medical and dental care not involving an invasive procedure and the right to consent for the child to medical, dental and surgical treatment during an emergency involving the immediate danger to the health and safety of a child.

A parent named as a sole managing conservator could make decisions concerning the child's education.

A sole managing conservator would have to provide a child with medical, psychological, dental care and the right to establish the primary residence of the child and to make decisions regarding the child's education.

A new section relative to adult disabled children would provide for a court to render an order for the possession or access to an adult disabled child that is appropriate given the circumstances. An adult disabled child could refuse access if the child was mentally competent.

A court could replace a joint managing conservatorship with sole managing conservatorship if the child's present living environment could endanger the child's physical health or significantly impair the child's emotional development. A court could modify an order that designated a sole managing conservator of a child 12 or older, if the child had filed in

writing with the court the name of the person who was the child's choice to be managing conservator and the court found that such an appointment would be in the child's best interest.

A court could, at its discretion, order additional periods of possession of or access to a child to compensate for the denial of court-ordered possession or access.

The bill provides that a court-appointed volunteer, a board member or employee of a volunteer advocate charitable organization or a member of an administrative review board would not be liable for civil damages due to a recommendation made or opinion rendered while serving in an official capacity unless the act or failure to act was wilful, committed with conscious indifference or with reckless disregard.

In a suit in which adoption is requested or possession of or access to a child is an issue and in which PRS is not a party and has no interest, the court would be required to appoint a private agency or person to conduct a social study.

A court could involuntarily terminate a parent's custody of a child only by a finding by clear and convincing evidence that certain parental conduct existed, including that the parent had constructively abandoned the child who had been in the managing conservatorship of PRS or another authorized agency for not less than one year and when certain other conditions exist, and that such a termination would be in the best interest of the child.

A court would have to terminate the parent-child relationship in a suit filed by PRS if the court found PRS had made "reasonable efforts" to return the parent and child.

A court could order termination of the parent-child relationship in a suit filed by the department if the court found that PRS had been the temporary or sole managing conservator, rather than the permanent managing conservator.

Child support. The bill would make a person owing child support who is more than 30 days late in paying, as well as the business entity in which the person owing support is a sole proprietor, partner, shareholder or owner with an ownership interest of at least 25 percent, ineligible to receive state contracts, loans or grants until all arrearage have been paid or the person owing child support was in compliance with a written repayment agreement or court order as to any existing delinquency.

Any application for a contract, grant or loan paid from state funds would have to include the name and social security number of the individual or sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. The application, contract or bid would include standard language stating that if the entity or person holding a state contract was found to owe child support, the contract could be terminated, the vendor would be liable to the state for attorney's fees, including the cost of readvertising and reawarding of the contract.

Each licensing authority, agency administering a contract providing for a payment of state funds and agency administering a state-funded grant or loan would have to make certain requests of applicants to assist in the administration of law relating to child support enforcement, including obtaining an applicant's social security number, to be used confidentially only for child support enforcement purposes.

The attorney general would issue an order to suspend the professional, occupational, motor vehicle, hunting or fishing license or other recreational permits or licenses of persons who are behind in child support payments equal to or greater than the total support due for 90 days. This order would be issued only after the person owing support had been provided an opportunity to make payments toward the past due child support under an agreed or court ordered repayment schedule and had failed to comply with the terms. Licensing authorities would be required to provide certain information to the attorney general for each individual who holds, applies for, or renews a license upon request.

The person owing support, upon notice, could request a hearing within 20 days after the date of service of notice. The notice would also have to

include information stating that an order suspending the license shall be rendered on the 60th day after the date of service unless by that date:

- the attorney general received proof that all the arrearage and the current month's child support obligation had been paid;
- the child support agency or obligee filed a certification that the obligor was in compliance with a reasonable repayment schedule; or
- the obligor appeared at a hearing and showed that the request for suspension should be denied or stayed.

The request for a hearing would stay the suspension of the license pending the hearing. After a final order suspending a license, an order would be forwarded to the appropriate state agency, which would in turn verify the license, record and report the suspension and demand surrender of the license.

A court could order either one or both parents to make child support payments in a proceeding where PRS is named temporary managing conservator of a child whose parents' rights have not been terminated.

The bill provides for writs of withholding to be sent to employers and subsequent employers, provisions for employers to request a hearing and authorizing the person owing support whose employer receives a writ to request a hearing. It would authorize the court clerk to charge a fee of up to \$15 for each writ issued and delivered to an employer by mail. A person owing child support and the person owed child support could file a notarized request with the clerk of courts for an agreed to termination or reduction in child support payments. The court could deduct state income tax from the resources available upon which to determine net money available to pay child support.

Local registries at the county level could forward a child support payment to an address and in care of a person or entity designated by the person who is owed the child support payment. The local registry could require that the request be in writing or be made on a form provided by the local

registry but could not charge a fee for receiving the request or redirecting the payments as requested.

A 12 percent simple interest rate per year would apply on money judgments for retroactive and lump-sum child support payments, accruing from the date an order was rendered until the date the order was paid.

A court that rendered a child support order when there were arrearages could retain jurisdiction until the arrearages were paid in full.

A court could order one or both parents to pay child support in matters where PRS is named the managing conservator of the child. The court would have to order one or both parents to pay child support when PRS has been named permanent managing conservator of the child.

A court could not render an order that conditioned the payment of child support on whether a managing conservator allowed a possessory conservator to have possession of or access to a child.

The placement of child in foster care by PRS would constitute an automatic assignment to the state of any support rights attributable to the child. If such a child was entitled to child support enforcement services, PRS would be required to immediately refer the case to the attorney general. PRS and the attorney general would be required to enter into a memorandum of understanding regarding these provisions.

Paternity. In suits affecting the parent-child relationship, the presumption that a man is the "biological father of a child" could be contested by a man presumed to be the father of the child, who could contest his own or another man's presumed paternity, by a man alleging himself to be the biological father of the child, or by certain agencies.

The party denying a presumed father's paternity of a child would have the burden of rebutting the presumption of paternity by clear and convincing evidence.

The court could dismiss with prejudice a claim regarding a presumed father whose paternity was excluded by scientific evidence.

When two or more presumptions are in conflict, the court would be required to always find that the presumption of paternity would be weightier for a presumed father who is not excluded as the biological father by scientifically accepted paternity testing that shows that at least 99 percent of the male population is excluded.

The bill would impose a two-year statute of limitations period for claims contesting the presumption of paternity by a man who is not the presumed father but who claims to be. These cases would have to be dismissed by the court when the suit was filed more than two years after either the birth of the child or two years after the presumption of paternity came into existence, the presumed father resided in the same household as the child in a "father/child relationship" and the presumed father requested an order designating himself as the father of the child.

A suit contesting the presumption that a man was the biological father of a child could be filed at any time during the minority of the child by the biological mother of the child, a presumed father or a governmental entity.

If the presumption of paternity was rebutted, the court would be required to enter an order finding that the man presumed to be the father of the child is not the biological father of the child.

Reporting of abuse or neglect. The term "abuse" would include sexual conduct harmful to a child's mental, emotional or physical welfare or the failure to make reasonable efforts to prevent sexual conduct harmful to a child.

An act or omission that constitutes abuse would include placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child.

A "report" of abuse would mean a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

An individual who was licensed or certified by the state or who was an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or

certification was required, had direct contact with a child, including a teacher, nurse, doctor or day-care employee, would have to report the suspected abuse or neglect and could not delegate to or rely on another person to make the report.

The required reporting would apply without exception to an individual whose personal communications could otherwise be privileged, including an attorney, a member of the clergy, a doctor, social worker and mental health professional.

The identity of an individual making a report of abuse or neglect would be confidential and could not be disclosed unless by an order of a court or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

The bill would delete the requirement that mandated reports of a child's school truancy or a voluntary absence from home without a parent's consent. The bill would require that reports of abuse or neglect involving a person responsible for a child's care, custody or welfare be reported to PRS, which would have to make a prompt and thorough investigation to substantiate the accuracy of the report.

A person acting in good faith who reported or assisted in the investigation of a report of alleged child abuse or neglect who testified or otherwise participated in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect would be immune from civil or criminal liability that might otherwise be incurred or imposed.

Immunity from civil and criminal liability would extend to an authorized volunteer of the department or a law enforcement officer who participated in an investigation at the department's request if the person was acting in good faith and in the scope of the person's responsibilities.

A person who self-reports abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect would not be immune from civil or criminal liability.

Reports of alleged or suspected abuse, the identity of the person making the report and certain files, records, communications and working papers would be confidential and not subject to the Open Records Act. A court could order the disclosure of confidential information under certain specific circumstances.

PRS, before an investigation is completed, would have to file a petition or take other action to provide temporary care and protection of a child when the department believed that the immediate removal of a child from the child's home was necessary to protect the child from further abuse or neglect.

PRS would have to investigate a report of abuse in a facility operated by, regulated by, or providing services under a contract with the Texas Department of Mental Health and Mental Retardation (TxMHMR), under rules developed jointly between PRS and TxMHMR.

A report of alleged abuse or neglect in a county juvenile detention facility would have to be made to a local law enforcement agency for investigation.

PRS would have to investigate alleged abuse or neglect that took place in a public or private school under the jurisdiction of the Central Education Agency (CEA) and send a written report to CEA and the local school board or local governing body for appropriate action. PRS would be required to provide a copy of the report and investigation findings to the parent or guardian of the child.

Other provisions. The bill would change what is required when petitioning a court seeking to take a child into temporary custody, requirements for courts to follow when granting custody and hearing requirements; enact provisions regarding contracting between the attorney general and Texas CASA and require that no more than 12 percent of the funds appropriated for the operation of Texas CASA can be spent for administrative purposes by CASA.

When a mother of a child is not married to the father, whoever is responsible for the filing of the birth certificate would be required to give

both the mother and father an opportunity to sign the birth certificate and to provide written information about establishing paternity, including an explanation of the rights and responsibilities of acknowledged paternity and information about the availability of services to the child's mother and father.

An affidavit could be signed by a parent voluntarily relinquishing parental rights if the affidavit is signed after the birth, but no earlier than 48 hours after the child's birth.

PRS could be represented in court by the district or county court prosecutors, the attorney general or in Harris County, by the attorney who represents the state in civil cases at the county or district level.

The bill would repeal from the Family Code (as amended by HB 655) sec. 105.006 (f), relating to information in the final order for child support; sec. 264. 612 (c), relating to the amount of the legislative appropriation that the attorney general may use for administration of the CASA program; sec. 162.023, relating to the transmittal of adoption records by clerks; and sec. 162.024, relating to the confidentiality requirement of PRS.

The bill would take effect September 1, 1995, and apply to a pending suit affecting the parent-child relationship without regard to whether the suit was commenced before, on or after the effective date.

NOTES:

HB 433 by Goodman, the House companion bill, passed the House on May 11 by non-record vote and currently in the Senate Jurisprudence Committee with a hearing scheduled for May 23. HB 433 and CSSB 7 share many of the same provisions.

During the first five years CSSB 7 would yield a probable savings in general revenue of \$541,000 a year over a five-year period and a gain in the child support retained collection account of about \$6.6 million in 1996 and \$10.6 million in the year 2000, according to the fiscal note. The bill may require the attorney general to hire additional staff to assist with increased child support collections.

The committee substitute made various changes to the Senate-passed version of SB 7. Many sections of the Senate version were deleted, some of these deletions include affidavits of a person who is absent and seeks a divorce, provisions relating to common law marriages and alternative dispute resolution in divorce proceedings. The committee substitute added many provisions including the alternative dispute resolution statement, the four-hour course requirement for some parents involved in custody disputes and the assignment of child support rights to the state for children in foster care.