

SUBJECT: Revision of child abuse and neglect statutes

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, Naishtat, A. Reyna, Smith

0 nays

1 absent — Williams

WITNESSES: For — Nancy Hagan, Children's Advocacy Centers of Texas; Linda Brown, Texas State Foster Parents Inc.; Winifred Conlon, Capitol Area Foster Parents Association; Tom Forbes, Children's Advocacy Centers of Texas, Inc.; Nancy Engman Holman, Texans Care for Children; Aaryce Hayes, Advocacy Inc.; Rita Powell, Judy Newby, Jane Quantan Piper

Against — David Shelton, Texas Fathers Alliance

On — Howard Baldwin, Department of Protective and Regulatory Services

BACKGROUND
:

Chapters 261 through 264 of the Family Code define when and how the state may remove children from abusive and neglectful homes. The code allows for involuntary termination of the parent-child relationship under certain circumstances. These include when the parent has been found criminally responsible for the death or serious injury of a child, has had another parent-child relationship terminated, or constructively abandoned the child for one year.

The Texas Department of Protective and Regulatory Services (DPRS) is the state agency with authority for investigating child abuse and neglect.

DIGEST: CSHB 1826 would make several changes to Family Code sections dealing with child abuse and neglect, DPRS operations, and conservatorship of children.

Involuntary termination of the parent-child relationship. CSHB 1826 would define the offenses of serious injury by reference to specific sections of the Penal Code. The bill also would allow a court to consider any parent-child relationships terminated in another state and would reduce to six months the length of constructive abandonment.

CSHB 1826 also would allow a court to terminate the parent-child relationship when parents:

- knowingly engaged in criminal conduct leading to imprisonment and inability to care for the child for at least two years;
- used a controlled substance in a manner that endangered the health or safety of the child and failed to complete a court-ordered substance abuse treatment program or repeatedly used a controlled substance after completing the program;
- failed to comply with court orders necessary to have a child returned from conservatorship; or
- caused a child to be born addicted to alcohol or an illegally obtained controlled substance.

Confidential information. Child welfare boards could conduct closed meetings to discuss, consider, or act on a case in a confidential matter. Files, reports, records, communications and working papers used or developed in providing services to a child would be confidential and not subject to public release under open records laws. Disclosure could be made only to DPRS and its employees, law enforcement agencies, prosecuting attorneys, medical professionals, other state agencies that provide services to children and families, the child's attorney, and the child's court-appointed volunteer advocate.

Members of review teams, multidisciplinary teams and county child protective boards would be authorized to receive confidential information when acting in an official capacity.

A caseworker would be required to release confidential information to a court that found such information was essential to the case and not likely to endanger the life or safety of persons involved in the case. The court would

have to render a written or recorded order for the information at a hearing for which all parties had been given notice.

Investigation procedures. Physicians and others examining an allegedly abused child would be allowed to take photographs to document the physical condition of the child. Children could be transported to a reasonable place for an interview or examination.

During an investigation, the DPRS would be authorized to obtain the medical as well as mental health records of a child or the parents. The agency would be exempted from payment of medical records fees to hospitals or health care providers if the records were requested in the course of an investigation.

Court proceedings. The prerecorded oral statement of a child 12 years or younger who allegedly observed the abuse of another child 12 years or younger would be admissible as evidence if certain authentication requirements were met. Also, a court could admit a hearsay statement by an abused child 12 years old or younger if, in a hearing conducted outside the presence of the jury, the court found that the statement could be reliable and the child was available to testify. The court could order that the statement be used in lieu of live testimony to protect the child's welfare.

Foster parents with whom a child resided for at least 18 months would have standing to file a suit affecting the parent-child relationship.

If a parent in a removal proceeding could not be found and was served a citation by publication, the court could render a temporary order at any time after the citation was published.

Removal of abuser from child's home. A court could order an alleged child abuser removed from a home if it found that the child in question was not in danger of abuse from a parent or other adult in the house and (1) that the presence of the alleged abuser constituted a continuing danger to the physical health or safety of the child or (2) if the child had been the victim of sexual abuse and risked continuing as a victim so long as the the alleged perpetrator remained in the residence. A temporary restraining order in this

type of case would expire not later than 14, rather than 10, days after the date it was rendered.

Emergency removal of child from parent using drugs. In emergency situations when a child's health or safety was threatened by a parent using a controlled substance, the child could be removed without a court order. In these circumstances, a DPRS representative, law enforcement officer, or juvenile probation officer could take possession of the child based on information that would lead a person of ordinary prudence and caution to believe that the parent or person responsible for the child was using a controlled substance in such a manner as to present an immediate danger to the child's physical health or safety.

Immigration status of child or family. The DPRS would be authorized to use state and federal funds to provide benefits or services to children and families who otherwise would be ineligible for the benefits or services, regardless of the immigration status of the child or the child's family. This provision would apply to such services as foster care, adoption assistance, medical assistance, and family reunification services.

The commissioners court that appropriated funds to a county child welfare board could similarly provide for children in need of protection and care without regard to their immigration status.

Foster care. The DPRS would be authorized to establish and maintain local bank or savings accounts for a child under its managing conservatorship as necessary to administer funds received in trust for the child. The funds would be available to support the child by paying foster care or other child care expenses.

The DPRS would be authorized to pay the cost of foster care for a child under its managing conservatorship so long as the child was a resident of the state and had been placed by the department in a foster home or child care institution or was under the placement and care of a state agency or political subdivision with which the DPRS had a reimbursement agreement. Foster care payments would be made regardless of the child's eligibility for federally funded care, and the DPRS would be able to accept and spend funds available from any source to make foster care payments. The Board

of Protective and Regulatory Services would be authorized to adopt rules that establish criteria and guidelines for payment of foster care.

The DPRS could spend funds appropriated for the child protective services program to pay reasonable and necessary funeral expenses for a child who died in foster care while under DPRS managing conservatorship. The child's estate would be liable to the DPRS for payment of foster care costs.

Children's advocacy centers. The DPRS would be authorized to contract with a statewide organization that had expertise in the establishment and operation of children's advocacy center programs for the provision of training, technical assistance and evaluation services for eligible local children's advocacy center programs. CSHB 1826 would establish eligibility criteria for awarding such contracts.

Abuse or neglect at school. When the DPRS received a report of alleged or suspected abuse or neglect of a child at a public or private school under jurisdiction of the Texas Education Agency (TEA), it would have to send a written report for appropriate action to the TEA, the agency responsible for teacher certification, the local school board or local governing body, and the school principal, unless the principal was alleged to have committed the abuse or neglect. On request, the DPRS would have to provide a copy of the report to the person alleged to have committed the abuse or neglect, but the report would be edited to protect the identity of the persons who reported the abuse or neglect. The Board of Protective and Regulatory Services would be required to adopt the rules necessary to implement this provision.

Other provisions. The definition of "abuse" would include the current use of a controlled substance in a manner that resulted in physical, mental or emotional injury to a child and causing, expressly permitting or encouraging a child to use a controlled substance.

The DPRS would be required to attempt to maximize the use of federal funding to provide medical care payments for children under its managing conservatorship. The agency could not provide services to a child found to have engaged in delinquent conduct.

CSHB 1826 would take effect September 1, 1997, and would apply to suits affecting the parent-child relationship filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1826 would improve the DPRS's ability to protect children and provide services to families affected by reports of abuse and neglect and remove obstacles to allow quicker permanent placement for children in state conservatorship.

The bill would clarify the circumstances warranting termination of the parent-child relationship. The definitions in current law could create murky legal questions; CSHB 1826 would precisely define the circumstances by reference to specific offenses under the Penal Code. It would also add new provisions allowing termination in instances involving lengthy jail sentences and drug abuse. While parents in prison may sincerely care for their children, in reality they are unable to function as a parent and perform parental duties. Drug abuse, on the other hand, is a chronic problem that may defy remedy. By establishing drug abuse as a condition that could warrant termination of parental rights, CSHB 1826 would better protect children and allow many who have been in temporary care for a very long time to finally be placed in a permanent loving home.

CSHB 1826 would allow courts and members of review teams, multi-disciplinary teams, and county child protective boards to have access to the confidential information they need to properly perform their jobs and help children.

The bill also would increase the evidence available in child abuse cases by making a child's prerecorded oral statements describing the abuse of another child and inadmissible hearsay statements admissible when certain requirements are met. Abused children should not have to undergo yet more torment by confronting their abusers in court. If a court finds the statement credible, it should be admitted in evidence.

CSHB 1826 would improve the DPRS' ability and authority to deal with reports of the abuse or neglect of a child at school, remove an alleged perpetrator of child abuse from the child's residence, and take emergency possession of a child whose health or safety is threatened by a parent using drugs. The state's priority is protection of the child, but DPRS would have

to follow procedures designed to protect the rights of other involved parties in each of those cases.

The bill would improve the operation of local children's advocacy centers and clarify the responsibilities of persons participating in child abuse investigations under the authority of an advocacy center. Advocacy centers offer a friendly location for interviewing or examining children who may have been physically or sexually abused. They are staffed by local law enforcement, representatives of the local prosecutor's office, medical professionals, DPRS staff, and other social work professionals. The centers provide a valuable service to abused children by minimizing the number of interviews and exams the child has to endure, and should be better supported by the state.

**OPPONENTS
SAY:**

The bill would discriminate against fathers by allowing termination of the parent-child relationship when the parent was imprisoned for two years. Studies have shown that males tend to receive longer sentences than females for the same crimes. Furthermore, the length of imprisonment does not mean that the parent does not care for the child. The rules should look to the nature of the offense rather than the length of the sentence. A parent may be locked up for a considerable amount of time for a victimless crime.

There have been many cases where one parent has used a false allegation of child abuse as a weapon against the other parent when their marriage was in troubled. The provision authorizing a court to remove an alleged perpetrator of abuse from the child's home could easily be misused in those situations.

NOTES:

The committee substitute defined the new grounds for involuntary termination of the parent-child relationship and added to the grounds failure to undertake court-ordered actions and responsibility for a child being born addicted to alcohol or a controlled substance. It also added the provisions addressing children's advocacy centers, defining parental use of controlled substances as abuse, and requiring rules for investigating abuse in public schools. It deleted provisions addressing status hearings, permanency hearings, permanency plans and progress reports, and placement review hearings.