

SUBJECT: Revising Family Code provisions affecting adoption

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Goodman, Staples, McClendon, McReynolds, Naishtat, A. Reyna
0 nays
3 absent — J. Jones, Smith, Williams

SENATE VOTE: On final passage, April 8 — voice vote

WITNESSES: (*On House companion, HB 2245*)
For — Nancy Engman Holman, Texans Care for Children; Melinda Wheatley; Jane Quantan Piper; Rita Powell

Against — None

On — Howard Baldwin, Department of Protective and Regulatory Services; David Shelton, Texas Fathers Alliance

BACKGROUND
:

The Department of Protective and Regulatory Services (DPRS) is the state agency charged with investigating reports of child abuse and neglect, placing children in foster care and permanent adoptive homes, and providing various other services to children and families.

In cases of reported abuse or neglect, the DPRS may be given court authority to remove children from their homes; the department may act without court authority in some emergency situations. If the child is not returned home within 14 days, a court must hold a full adversary hearing at which it may appoint the DPRS as the child's temporary managing conservator. A status hearing on the case must be held 60 days from the appointment and review hearings every six months to determine whether the child should remain in substitute care, i.e., care outside the child's home, such as foster care, institutional care, adoption or placement with a relative.

The Governor's Committee to Promote Adoption was created in May 1996 to identify ways to reduce legal, judicial and administrative barriers to

adoption. The Texas Court Improvement Project is an initiative to implement court reforms in the area of foster care and adoptions.

DIGEST:

CSSB 34 would amend the Family Code to implement several recommendations of the Governor's Committee to Promote Adoption, the Texas Court Improvement Project, and the Sunset Advisory Commission.

Efficiency measures. The bill would require the DPRS to institute several programs to increase efficiency. The department would have to begin efforts to locate qualified persons to adopt a child at the same time it began procedures to terminate a parent-child relationship. The DPRS would have to report to the court involved on the child's adoptability and its search for prospective adoptive parents, including efforts with licensed child-placing agencies.

The DPRS also would be required to adopt policies to improve services to children and families, to increase its accountability, and ensure consistency of services throughout different regions of the state. To establish these goals, the DPRS would be required to:

- establish time frames for initial screening of families seeking to adopt children;
- evaluate the effectiveness of management-level employees in expeditiously making permanent placements for children;
- establish, as feasible, comprehensive assessment services in various locations in the state to determine needs of children and families served;
- emphasize and centralize monitoring and promotion of permanent placement of children served;
- establish goals and performance measures for the permanent placement of children;
- seek and provide incentives for private licensed child-placing agencies to place children remaining available for more than 90 days;
- encourage approval of foster parents as adoptive parents; and
- address regional in making permanent placements within reasonable time frames.

Services database and reports. The DPRS would be required to maintain in its central database specific information concerning the services it provided to children placed in its custody. The bill would require that detailed information be maintained on the process, including time frames, of each adoption and placement in substitute care. The DPRS also would have to compile information on the numbers and percentages of children and families served through various programs.

The department would have to make the information available to the public by computer, except for information required by law to be confidential.

The DPRS would have to report the status for children in substitute care to the Board of Protective and Regulatory Services at least once every 12 months. The report would have analyze the length of time each child has been in substitute care and the barriers to placing the child for adoption or returning the child to the child's parent or parents.

Hearings and reviews. CSSB 34 would institute shorter deadlines for hearings involving placement of children, and require hearings and status reviews to include planning for permanent placement.

A status hearing would have to be held within 60 days after the court rendered a temporary order appointing the DPRS as temporary managing conservator of a child, rather than within 60 days after the full adversary hearing. At the status hearing, the court would have to review both the child's status and the permanency plan developed for the child.

The court would have to hold an initial permanency hearing — renamed from the current “review hearing” — within 180 days after rendering a temporary order appointing the DPRS as temporary managing conservator of a child, rather than 180 days after the full adversary hearing. The DPRS would be required to prepare a permanency plan for the child and to provide a copy of the plan to each person entitled to notice of the permanency hearing.

The court would have to clearly warn parents in open court that parental and custodial rights and duties could be restricted or terminated unless they were willing and able to provide the child with a safe environment. Such

warnings would be required at the full adversary hearing after the governmental entity took emergency possession of a child and at the status hearing and each permanency hearing after the court rendered a temporary order appointing the DPRS as temporary managing conservator.

The final order could require that the child be returned to the parent; name a relative or another person as the child's managing conservator; appoint the DPRS as managing conservator of the child without terminating the parent-child relationship; or terminate the parent-child relationship and appoint a relative, another suitable person or the DPRS as managing conservator of the child.

If the DPRS were named a managing conservator, the court would have to conduct a placement review hearing at least once every six months until the child became an adult or was adopted, depending on whether the final order terminated parental rights.

CSSB 34 would establish requirements for placement review hearing notice, processes, and reports. At each placement review hearing, the court would have to make a determination on each issue addressed in the placement review report, including whether the DPRS or its authorized agency had exercised due diligence in attempting to place the child, if eligible, for adoption.

Judicial efficiency report. The Office of Court Administration would be required to report on judicial efficiency in certain family law cases brought by the DPRS, with information provide in part by the department. The report would have to recommend docket management procedures and reporting requirements for cases, assess the need for mandated judicial review of the cases to monitor the adoption process, review the use of continuances in cases and the promptness of hearings, list courts giving priority to DPRS cases, and name judges and associate judges presiding over such cases. The first report would have to be submitted to to the governor, the lieutenant governor, the speaker of the House, and the chief justice of the Supreme Court before December 1, 1999, and annually thereafter

Other provisions. CSSB 34 would make other changes designed to enhance efficiency in DPRS procedures. The bill would:

- reduce from two years to six months the period during which the validity of an adoption order could be attacked;
- establish time frames for extending or dismissing a suit to terminate the parent-child relationship;
- require the DPRS to immediately file suit to terminate the parent-child relationship of an abandoned child; and
- allow the presiding judge of an administrative judicial region to appoint a master for a court handling child protection cases, if the court needed assistance in order to process the cases in a reasonable time.

CSSB 34 also would provide that in any court action under the Family Code, the DPRS would be represented by the county attorney where the suit was brought, unless the district attorney or criminal district attorney elected to provide representation. If the case involved a conflict of interest or special circumstances, an attorney employed by or contracting with the DPRS could provide representation.

Effective dates. Provisions of CSSB 34 addressing legal representation of the DPRS, adoption and substitute care information, the search for adoptive parents and DPRS planning and accountability would take effect September 1, 1997. Most other provisions would take effect January 1, 1998.

**SUPPORTERS
SAY:**

CSSB 34 would make the Texas adoption system more decisive, efficient and accountable. Statistics for fiscal years 1991-1995 show that children spent an average of 40.8 months in the state system before being adopted. For children, such a delay seems like a lifetime and can be extremely detrimental to healthy emotional development. A loving stable environment is vital to raising healthy productive children, and all Texas children deserve such an environment. CSSB 34 would help provide this environment more quickly to children in foster care by expediting the adoption process.

The bill would do this by establishing a 12-month deadline for resolving each child's case. This would prevent children from remaining in the state's care for long periods of time or being moved through a long string of foster homes. In addition, the bill would require the DPRS to begin searching for prospective adoptive parents immediately after a decision was reached to petition the court for termination of parental rights.

The bill would improve the stability and security of children and adoptive families by shortening the time during which an adoption order could be attacked.

CSSB 34 would encourage the DPRS to expedite its internal processes and monitor their effectiveness, regionally and statewide. DPRS accountability would be increased by requiring it to maintain information on the status of children in its custody and make that information available to the public by computer.

The bill would promote judicial efficiency by ensuring timely productive hearings. In addition, the Office of Court Administration would have to make annual recommendations to increase judicial efficiency.

CSSB 34 would contain a special provision to help children who have been abandoned. An authorized DPRS representative would be able to assume care and custody of the child, and the DPRS would be required to immediately file suit to terminate the parent-child relationship of the abandoned child. This would help children who have been abandoned by a biological parent to be placed more quickly in a nurturing permanent home.

The Legislature already has provided for the parental rights of those biological fathers who affirmatively assume responsibility for children they may have fathered by approving HB 1091 by Goodman, et al., which would create the paternity registry. The bill is awaiting action by the governor.

**OPPONENTS
SAY:**

CSSB 34 would make a drastic — and perhaps tragic — move in reducing the time during which an adoption order could be attacked from two years to only six months. This would not be enough time for many biological parents acting in good faith to come forward. For example, the bill could unfairly and prematurely cut off the rights of a biological father who did not

know he had a child or whose child had been taken away by the mother. The paternity registry, if it is created, would not resolve this problem because it would be hard for many fathers to provide the information required by the registry or meet the deadline for registering.

Requiring the DPRS to immediately file suit to terminate the parent-child relationship of an abandoned child also could unfairly threaten the rights of a parent who did not have possession of the child. One parent could have a child and abandon it without the other's knowledge, but both parents' rights could be terminated as a result. This could have unfair and tragic results for the parent with no knowledge of the abandonment.

The bill should explicitly provide that in cases where the court appoints the DPRS as managing conservator without terminating parental rights, the parent should maintain the visitation rights of a possessory conservator.

NOTES:

Major changes made by the committee substitute included adding provisions on deadlines for attacking an adoption order and requiring the DPRS to report certain information to courts, and deleting provisions relating to the establishment of a paternity registry and grounds for termination of parental rights. The committee substitute also made changes to the effective dates of various sections of the bill.

Two related bills, HB 1826 and HB 1091 by Goodman, revising child abuse and neglect statutes and relating to adoption procedures, have passed both houses and await action by the governor. The DPRS sunset bill, SB 359 by Brown, includes several provisions similar to those in SB 34. That bill was approved by the House on second reading on May 21.

The sponsor the bill, Rep. Elvira Reyna, plans to offer a floor amendment to conform CSSB 34 to certain provisions of SB 359, the DPRS sunset bill.