SUBJECT: Awarding sole managing conservatorships in family violence cases

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 9 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt

0 nays

WITNESSES: For — Jan Langbein, Genesis Women's Shelter; Mary Lee Hafley, The Women's Shelter; Bree Buchanan, Texas Council on Family Violence; Al Johnson, Texans for Justice; Beth Ubelhor; Judith Wells

Against — Robert L. Green Jr. and David Shelton, Texas Fathers Alliance

BACKGROUND: The Family Code prohibits courts from appointing joint managing conservators for a child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent against the other parent, a spouse, or a child. The code also requires courts to consider the commission of family violence when deciding whether to deny, restrict, or limit the possession of a child by a parent who is named possessory conservator.

DIGEST: CSHB 1411 would, unless specified conditions were met, prohibit courts from appointing a parent as the sole managing conservator of a child if the court had been presented credible evidence that the parent committed family violence during the two years before the suit was filed or while the suit was pending.

A court could appoint this parent as sole managing conservator if:
! the person had successfully completed a battering intervention and prevention program or family counseling and the person was not abusing alcohol or a controlled substance; and
! appointing the other parent as the child's sole managing conservator would endanger the child's physical health or emotional welfare and not be in the best interest of the child.

Unless specified conditions were met, courts could not allow a parent access

to a child if the court had been presented credible evidence that the parent had a history or pattern of committing family violence during the two years before the suit or while the suit was pending.

The court could grant access under these conditions if:

- the court found that awarding the parent access would not endanger the child's physical health or emotional welfare and would be in the best interest of the child; and
- the court rendered a possession order that was designed to protect the child and anyone else who had been a victim of family violence committed by the parent.

The possession order could include requirements that a court-appointed person or entity continuously supervise access to the child, the exchange of the child occur in a protective setting, the parent abstain from the possession or consumption or alcohol or controlled substances before or during the visit, or the parent completed a battering and intervention prevention program or family counseling.

The bill also would add to the Family Code that it is the state's policy to provide a safe and non-violent environment for a child. The current general requirement that courts consider the commission of family violence when deciding whether to deny, restrict, or limit the possession of a child by a parent who is named possessory conservator would be repealed.

CSHB 1411 would apply to a suit affecting the parent-child relationship filed on or after the bill's September 1, 1999, effective date. Enactment of the bill would not constitute a material and substantial change of circumstances that would warrant modification of a court decree rendered before the bill's effective date.

SUPPORTERS SAY:

CSHB 1411 would help ensure that, unless certain conditions were met, courts could not award custody of children to parents who have a recent history or pattern of family violence. Tragically, even though courts currently can consider the commission of family violence, custody sometimes is awarded to a violent parent, perhaps because the non-violent parent is vague about the occurrence of violence or has a lower income. CSHB 1411 would help protect children and could help break the cycle of child abuse by reducing a child's exposure to violence. Approximately 70 percent of men

who abuse their partners will also abuse their children.

The seriousness of family violence makes it appropriate that in these cases the violent parent has a high burden to overcome to be awarded sole custody. The Family Code already prohibits joint managing conservatorships where there is a history or pattern of sexual or physical abuse. CSHB 1411 would apply similar tests to the awarding of sole managing conservatorships. This would help meet the intent of provisions that deny joint conservatorships in family violence cases to ensure that violent parents do not get custody of children.

CSHB 1411 would not take away judicial discretion to award custody in family violence cases, but simply create a presumption against awarding sole managing conservatorship or unrestricted visitation to a violent parent. Judges would continue to have discretion to determine what is considered credible evidence of family violence and to set guidelines such as when a person could be required to abstain from alcohol before seeing a child.

CSHB 1411 would not shut the door to a parent gaining custody. Parents with a recent history of family violence still could be awarded conservatorship if they completed a battering prevention program or family counseling and were not abusing alcohol or drugs and if placing the child with the other parent would endanger the child and not be in the child's best interest.

CSHB 1411 also would help protect children by establishing guidelines for visitation if a parent were violent. CSHB 1411's provisions dealing with items that may be included in possession orders would be permissive and not require that courts order supervised visits or abstention from alcohol.

OPPONENTS SAY:

CSHB 1411 is unnecessary because courts already have discretion to consider the commission of family violence when deciding custody or visitation. CSHB 1411 would unwisely place a higher burden for custody awards in some cases and limit the discretion of the courts. Courts should be able to award sole custody based on the best interest of the child and who would be the best parent.

CSHB 1411 is vague about what would be considered a history or pattern of family violence. For example, there are no guidelines about whether simple

allegations – which sometimes are false – with no other proof would meet these tests.

CSHB 1411 also is unclear about the time frame in which possession orders could require that parents abstain from the possession or consumption of alcohol, by allowing courts to order parents to abstain "before" a period of possession.

NOTES:

The committee substitute required that the history or pattern of family violence would have to occur during the two years preceding the custody suit, while the original bill would have applied to family violence that occurred at any time. The substitute added the test of "best interest of the child" for awarding of custody and possession in situations covered by the bill. The original bill would have applied to suits without regard to whether they were commenced before, on, or after September 1, 1999, while the substitute would apply only to suits filed on or after September 1, 1999.

A similar bill, SB 208 by Moncrief, has been referred to a subcommittee of the Senate Jurisprudence Committee.