SUBJECT: Admissibility of statements by children in custody of DPRS

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt

0 nays

1 absent — Pickett

WITNESSES: For — Barbara A. Taft and Susan Butz, People of the Heart; Shirley Murray and Rosie Wilson, LaCresha C. Murray; Charlene D. Harris, LaCresha Murray/People of the Heart; Theresa Gorman; Verta L. Thompson; Keith S. Hampton

Against — None

On — Robert Dawson

BACKGROUND: Family Code, sec. 51.095 outlines the conditions under which children's oral and written statements are admissible as evidence in juvenile justice proceedings. In general, a child in "custody" must be given certain warnings by a magistrate and must waive certain rights before the child can be questioned. If a child signs a statement, a magistrate must determine if the statement is given voluntarily. A child can be in custody in a detention facility, in another place of confinement such as a juvenile processing office, or in the custody of an officer somewhere besides a law enforcement office. The Family Code does not establish rules for statements taken from children who are not in custody.

DIGEST: CSHB 2671 would add another circumstance under which children's written or oral statements would have to adhere to the Family Code rules concerning statements admissible as evidence in juvenile justice proceedings. The rules would have to be followed if a child was suspected of an offense and, during or after questioning by an officer, the child was in possession of the Texas Department of Protective and Regulatory Services (DPRS).

CSHB 2671 would take effect September 1, 1999, and would apply only to admissibility of statements made on or after that date.

SUPPORTERS SAY:

CSHB 2671 would close a loophole that has been used to question children and elicit their statements under questionable and controversial circumstances. By requiring that statements taken from children in DPRS custody follow the Family Code guidelines, CSHB 2671 would give these children the minimal protections and rights currently given to children who are in custody. Giving all children these minimal protections would help ensure that the juvenile justice system is fair, thus increasing the public's confidence in it.

CSHB 2671 would eliminate situations like the one in which 11-year-old LaCresha Murray, who was in DPRS custody, was questioned for about two and one-half hours by police without a parent or lawyer present about the death of a two-year-old. Murray never received the complete juvenile warnings that the Family Code requires for children in custody. The trial judge accepted a claim by prosecutors that the Family Code rules requiring a magistrate to give her information about her rights did not apply because she was not in custody. Trial courts admitted her statement, and she was twice convicted of injury to a child and sentenced in the second trial to 25 years. However, in April 1999, the Third Court of Appeals overturned Murray's conviction and found that she had been in custody during her interrogation.

CSHB 2671 would codify what the appeals court found — that children in DPRS custody should receive the same minimal protections as other children in custody. The bill also would eliminate any temptation on the part of prosecutors to try to influence DPRS to take custody of a child so that questioning would not have to follow Family Code guidelines.

Since law enforcement officers currently do not need parental permission to talk to juveniles about crimes, CSHB 2671 would not impose this requirement for children in DPRS custody.

The intent of the bill clearly is to cover situations when a child is in DPRS custody at the time of questioning and not to impose a duty on law enforcement officers to know what might happen to a child in the future.

OPPONENTS SAY:

It is unclear what CSHB 2671 means by requiring Family Code procedures to be used if "during or *after* the questioning" a child was in custody of DPRS. A law enforcement officer would not necessarily know whether a child would be in DPRS custody after the questioning.

OTHER OPPONENTS SAY:

CSHB 2671 would not go far enough in protecting children. Law enforcement and juvenile authorities should have to obtain parental permission before questioning juveniles in DPRS custody or in any other circumstance.

NOTES:

The original bill would have prohibited DPRS from asking law enforcement authorities to take possession of a child unless the child's parent, managing conservator, or guardian had given permission.