

SUBJECT: Relating to emergency possession of a child in a foster care case

COMMITTEE: Juvenile Justice and Family Issues — favorable, with amendment

VOTE: 7 ayes — Goodman, A. Reyna, P. King, Menendez, Morrison, Naishtat, Nixon
0 nays
2 absent — E. Reyna, Tillery

WITNESSES: For — David Shelton, Texas Fathers Alliance
Against — None
On — Charles Childress, Texas Department of Protective and Regulatory Services

BACKGROUND: Family Code, chapter 262 establishes guidelines for emergency possession of a child by the Department of Protective and Regulatory Services (DPRS). If DPRS files a suit requesting the removal of a child from the home without a prior notice or hearing, the suit must be confirmed by a sworn affidavit by someone who can attest that there is immediate physical danger to the child or that the child has been a victim of neglect or sexual abuse and that the threat to the child's welfare leaves no time for a court hearing or to make reasonable efforts to prevent or eliminate the need to remove the child. For a court to order emergency custody, it must find that those conditions exist. The court must order the child to be returned home unless the court is satisfied that returning the child would pose a continuing danger to the child and that the nature of the emergency and the continuing danger to the child's welfare made it impossible or unreasonable to make efforts to allow the child to remain with or return to the person entitled to possession.

If a parent is found to have committed an offense against the child in question or against another child of the parent, including murder, abandonment, injury to a child, and certain sexual offenses, the court may find that the parent has subjected the child to aggravated circumstances. Under such a finding, the court may waive the requirements for a service

plan and reasonable efforts to return the child to the home and may speed up the trial for a final order for DPRS to take custody of the child.

In case of a permanency or placement review hearing, DPRS, the foster parent or director of residence where the child lives, each parent of the child, the child's managing conservator or guardian, an attorney *ad litem*, a volunteer advocate, and any other person or agency named by the court are entitled to 10 days' notice of the hearing and to present evidence and be heard at the hearing.

DIGEST:

HB 1566, as amended, would require the affidavit supporting a DPRS suit for emergency custody to affirm that reasonable efforts had been made to prevent or eliminate the need to remove the child, consistent with the circumstances and providing for the child's safety. The court would have to order the child's return unless it found that, in addition to a continuing danger to the child, remaining in the home would be contrary to the child's welfare and that reasonable efforts consistent with the circumstances and the child's safety had been made to prevent or eliminate the need to remove the child.

The bill would eliminate the provision that a court could find that a parent had subjected a child to aggravated circumstances if the parent had committed an offense against another child of the parent. Instead, the court could make a finding of aggravated circumstances if the parent had been convicted for murder or voluntary manslaughter of another child of the parent, for aiding, abetting, attempting, conspiring, or soliciting to commit those offenses, or for felony assault of the child in question or another child of the parent that resulted in serious bodily injury.

HB 1566 would add a preadoptive parent and a relative of the child providing care to the list of people entitled to at least 10 days' notice of a permanency hearing or a placement review hearing.

In a permanency hearing or placement review hearing, the court would have to determine whether the child's current placement was necessary, safe, and appropriate, whether a current out-of-state placement would continue to be in the child's best interest, and whether DPRS had made reasonable efforts to finalize the current permanency plan.

This bill would take effect September 1, 2001.

SUPPORTERS
SAY:

HB 1566 is necessary to bring portions of the Family Code into conformity with the language in the federal statutes to protect Texas from a possible loss of federal funds for foster care. Federal auditors have expressed concern about the provisions of Texas statutes relating to the emergency removal of a child from a home, particularly those relating to reasonable efforts made before the removal. DPRS has 8,000 new foster care cases per year, and the loss of federal funds would hamper severely DPRS' efforts to administer these cases.

HB 1566 also would strengthen parents' rights, because it would help ensure that DPRS made reasonable efforts to investigate the home circumstances and provide for the child's safety before removing the child from the home.

OPPONENTS
SAY:

HB 1566 would require that, for a court to find aggravated circumstances, the parent would have to have been convicted of an offense against another child of the parent. The current law requires that the parent be found by a court to have committed an offense. It is reasonable to assume that if a court found that a parent had committed an offense against another child, the child in question also would be in danger from that parent.

NOTES:

The committee amendment would, for the determination of the child's welfare in the home, change "returning the child to the child's home" to "continuation of the child in the child's home."