

SUBJECT: Relating to permanency hearings in foster care cases

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

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

WITNESSES: For — None
Against — None
On — Cynthia Bryant; Charles Childress, Texas Department of Protective and Regulatory Services; John Specia, Supreme Court Task Force on Foster Care

BACKGROUND: Family Code, ch. 161 sets forth grounds and procedures for the legal termination of the parent-child relationship. Chapter 263 provides for court hearings in cases involving endangered or neglected children removed from their parents' homes by the Texas Department of Protective and Regulatory Services (DPRS).

If DPRS is appointed temporary managing conservator, the agency is required to develop a permanency plan, which is an evaluation of the child's needs and possible long-term placement options. Initial permanency hearings must be held not later than 180 days after removal to determine whether children return home, are placed in a relative's home or substitute care (foster care), or are adopted.

The 75th Legislature in 1997 established time limitations on foster care cases that reduced the amount of time a child spent in foster care while awaiting the court's decision on a final permanency hearing. Current law imposes a 12-month deadline, with the possibility of a one-time 180-day extension, for issuing a final order in a suit filed by DPRS.

Current law requires the court to delay proceedings in a parent-child termination suit while any directly related criminal charges against one of the parents are pending.

DIGEST:

CSHB 2249 would amend Family Code, chapters 161 and 263 regarding permanency procedures for children in foster care. It would require a court that decides to retain a termination suit on its docket for up to 180 days after the statutory one-year limit to set a final hearing on a date that allows the court to render a final order before the required date for dismissal of the suit.

CSHB 2249 would authorize the termination of a parent-child relationship in a suit filed by DPRS if the agency had been the temporary or sole managing conservator of the child for at least six months before the date of the hearing to terminate.

CSHB 2249 would allow a parent who had criminal charges pending that were directly related to the parent-child termination suit to file a motion requesting a continuance of the final trial until the criminal charges were resolved. The court only could delay the trial if it found the delay to be in the best interest of the child. Whether a continuance were granted or not, CSHB 2249 would require a court to set a final hearing so that a final order could be rendered before the date for dismissal of the suit. Any party to the suit would be authorized to ask the appellate court to require the trial court to set the final hearing date.

CSHB 2249 would prohibit parties to a suit from extending the deadlines set by the court. A party who failed to make a timely motion to dismiss or a motion to request a final order to be rendered before the deadline for dismissal would waive the right to object to the court's failure to dismiss the suit. CSHB 2249 would define a timely motion as one that was made before DPRS had introduced its evidence, other than rebuttal evidence.

CSHB 2249 would add Family Code, sec. 263.405 to provide for the acceleration of the appeals process in foster care cases. It would establish deadlines for motions and hearings for appeals. It also would establish guidelines for claiming indigence and the appointment of an attorney or fees required. CSHB 2249 would prohibit a court from extending the deadline for

filing a record or appellate brief except when done with a show of good cause.

CSHB 2249 would take effect September 1, 2001. A pending suit affecting the parent-child relationship would be affected regardless of whether the suit was filed before, on, or after this date.

SUPPORTERS
SAY:

CSHB 2249 is necessary because it would eliminate traps for the unwary that exist in current law. These traps have prevented the resolution of a case on its merits, even after a jury hands down a verdict. Current law mandates a court to determine a dismissal date and dismiss the suit if the time limits are not met. However, it does not provide a mechanism through which DPRS or any other party can compel the trial court to set the case in a timely manner for final trial.

The bill would clean up current law to ensure prompt action in foster care cases in order to minimize the time that children spend in temporary care. It would provide tools to enforce deadlines and would ensure that these cases are tried on their merits and not derailed on a technicality.

CSHB 2249 also would ensure that the appellate process is accelerated and, therefore, would help minimize the time that a child has to be subject to lengthy and distressing court proceedings in determining permanent placement.

OPPONENTS
SAY:

CSHB 2249 could be a burden to some parents with pending criminal charges relating to the parent-child relationship. Under current law, the court is required to delay the final trial until criminal charges are resolved, but CSHB 2249 would put the burden on the parent against whom the criminal charges are filed to file a motion requesting a delay. If the parent is presumed innocent, then the court automatically should allow the suit to be delayed until the criminal charges are resolved.

NOTES:

A related bill, HB 2158 by Thompson, which passed in the House on the Local, Consent, and Resolutions Calendar on April 5, requires appeals in parent-child termination suits to be accelerated and take precedence over civil cases.

CSHB 2249 made several changes to the original bill, including:

- ! removing provisions regarding the termination of the parent-child relationship after the denial of a prior petition to terminate;
- ! clarifying that the court is authorized to terminate the parent-child relationship if DPRS has been the temporary or sole managing conservator for at least six months instead of the six months prior to the date of the hearing;
- ! removing provisions permitting the court to issue emergency orders allowing possession of the child by DPRS under certain circumstances; and
- ! prohibiting parties to a suit from extending the deadlines set by the court by agreement.