SUBJECT: Presumption against child custody by parent with abuse history

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Goodman, A. Reyna, P. King, Menendez, Morrison, Naishtat

0 nays

3 absent — E. Reyna, Nixon, Tillery

SENATE VOTE: On final passage, February 15 — 26-0

WITNESSES: *(On House companion bill, HB 960:)*
For — Bree Buchanan, Texas Council on Family Violence; Laura Minze, The Family Place

Against — David Shelton, Texas Fathers Alliance

On — Jeana Lungwitz

BACKGROUND: Under Family Code, sec. 153.004, in appointing sole or joint managing conservators, a court must consider evidence of the intentional use of abusive physical force by a party against the party's spouse, a parent of the child, or any person younger than 18 committed within the two years before the suit was filed. The court may not appoint joint managing conservators if there is credible evidence that one parent has a history of child neglect or of physical or sexual abuse of the other parent, a spouse, or a child.

DIGEST: CSSB 140 would establish a rebuttable presumption that the appointment of a parent as sole managing conservator or as the person with exclusive right to determine the child's primary residence is not in the child's best interest if there is credible evidence that that parent has a history of child neglect or of physical or sexual abuse of the other parent, a spouse, or a child.

This bill would take effect September 1, 2001, and would apply only to an order in a suit affecting the parent-child relationship rendered on or after that date, regardless of when the suit was filed.

SUPPORTERS SAY:

CSSB 140 would make a common-sense change in how courts may appoint parents having responsibility over children. A court now cannot appoint a person with a history of family violence as a joint managing conservator, but no statutory provision prohibits a court from appointing a parent with such a history as sole conservator. Family violence has devastating effects on children. Not only do such children live in a constant environment of trauma, but they learn that violence is an acceptable way of life. CSHB 140 would create the presumption that it is not in a child's best interest to appoint a parent as sole managing conservator or to grant that parent the exclusive right to determine the child's primary residence if that parent had a history or pattern of child neglect or of physical or sexual abuse.

A similar bill filed last session would have prohibited courts from appointing as sole conservator a parent with a history of family violence or abuse. Some judges felt that bill was too restrictive and would have taken away their discretion. By establishing a rebuttable presumption rather than an inflexible prohibition, CSSB 140 would give judges direction without tying their hands and would maintain judicial discretion.

OPPONENTS SAY:

Creating a rebuttable presumption when one parent accuses the other parent of abuse would encourage one party to lie about the other to gain the upper hand in a custody battle. It would be unfair that in certain cases, parents might have to defend themselves against frivolous accusations at the risk of losing custody of a child.

NOTES:

The House Juvenile Justice and Family Issues Committee considered SB 140 in lieu of the House companion bill, HB 960 by Naishtat/E. Reyna. The committee substitute changed the Senate-passed version by applying the bill's provision to the appointment of a conservator who has the exclusive right to determine residency, as well as to the appointment of a sole managing conservator.

HB 1411 by Naishtat, as filed in the 76th Legislature, would have prohibited a court from appointing as sole managing conservator a parent with a history of family violence or abuse. As enacted, effective September 1, 1999, the

bill prohibits only visitation by such a parent, with certain exceptions, and does not address sole conservatorship.