HOUSE
RESEARCH
ORGANIZATION bill analysis 3/31/2003

HB 823
Goodman

SUBJECT: Renaming child support masters as associate judges and revising their powers

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

VOTE: 6 ayes — Dutton, Goodman, Baxter, Castro, Hodge, Reyna

0 nays

3 absent — Dunnam, J. Moreno, Morrison

WITNESSES: For — Roy A. Getting, Texas Fathers Alliance

Against — None

BACKGROUND: Under the federal Child Support Enforcement Amendments of 1984, a state that receives federal funds for child-support enforcement must have laws that specify expedited processes to establish and enforce child-support obligations. Federal regulations define expedited processes as "administrative or expedited judicial processes or both which...meet specified processing times and under which the presiding officer is not a judge of the court."

The Omnibus Budget Reconciliation Act of 1993 changed the federal time frames for expediting Title IV-D (child-support enforcement and paternity) cases and removed the restriction against the presiding officer being a judge of the court. Under the federal standard, 75 percent of a state's Title IV-D cases must be completed within six months, and 90 percent must be completed within one year. Texas Family Code, sec. 201.110(a) specifies more stringent time frames: 90 percent of such cases must be completed within three months, 98 percent within six months, and 100 percent within one year.

In Texas, three types of judges oversee family law matters: judges of family law district courts, Title IV-D masters for child support, and associate judges for child protection. Family Code, Chapter 201, Subchapter B governs the judicial officers who hear child-support and paternity cases brought by the Office of the Attorney General (OAG), the state's Title IV-D agency. The 69th Legislature in 1986 created the child-support master program in response

to the 1984 federal legislation. Unlike associate judges under Chapter 201, Subchapter A, child-support masters do not hear cases involving marriage dissolution, family violence, and some other suits involving the parent-child relationship. Generally, the powers and duties of a child-support master are the same as those of an associate judge under Subchapter A, although fewer actions by a master require ratification by a referring court. Family Code, sec. 201.1066 requires the state Office of Court Administration (OCA) to help presiding judges monitor the masters' compliance with job performance standards and with federal and state laws and policies.

The 76th Legislature in 1999 enacted Chapter 201, Subchapter C, creating another class of associate judges to handle cases of child abuse and neglect. Provisions of Subchapter A also apply to associate judges appointed under Subchapter C, unless a conflict exists, in which case Subchapter C controls.

Child-support masters and associate judges for child protective cases are state employees appointed and supervised by presiding judges of the administrative judicial regions, and they may be appointed to serve on more than one court.

DIGEST:

HB 823, as amended, would replace the term "child support master" with the term "associate judge" throughout Family Code, Chapter 201, and would make other conforming changes. It also would replace the term "substitute care," more commonly known as foster care, with the term "child protection" in certain portions of the code.

The bill would amend the current time frames in state law for disposing of Title IV-D cases to align them with the federal standard of completing 75 percent within six months and 90 percent within one year.

As amended, HB 823 would create an exception to the requirement that a presiding judge appoint a Title IV-D master if the judge determines that a court requires one. If a county had entered into a contract with the OAG, then county personnel, including judges and associate judges of the county courts, could provide enforcement services directly.

The bill would repeal the existing provision that a child-support master cannot be designated as an associate judge. It would specify that to the extent that

Subchapters A and B conflict in regard to the law governing associate judges, Subchapter B would control.

The bill would broaden the referring court's appellate power by allowing it, upon a motion, to hear and render an order for postjudgment relief, including a motion (rather than an order) for a new trial or to vacate, correct, or reform a judgment. It would specify that an associate judge can hear and render orders on suits to modify or clarify existing child-support orders, motions to enforce child-support orders or revoke a respondent's community supervision, or a respondent's compliance with conditions for suspending his commitment. The bill would limit when an associate judge could hold a hearing to determine if a respondent was complying with an order by not allowing such a hearing to take place during an appeal to that order.

HB 823 would specify that an associate judge's salary must be paid from county funds, rather than "the county fund." It would allow these salaries to be paid from funds available from the state and federal government under the entire subchapter, rather than under sec. 201.107, which specifically addresses state and federal funds.

The bill would specify additional details of OCA's duties in regard to assisting presiding judges. The OCA would have to help presiding judges address associate judges' training and resource needs, conduct annual performance evaluations of associate judges and others appointed under the subchapter, and deal with complaints about associate judges or the associate judge program. These duties would apply to helping presiding judges monitor the performance of associate judges for child protective services as well as of associate judges for child-support cases.

The bill would amend the limitation on an associate judge's outside practice of law to preclude only full-time judges from engaging in outside practice. The bill also would prohibit associate judges appointed for child protective cases from engaging in the private practice of law, regardless of whether they were part-time or full-time judges.

The bill would authorize a presiding judge to appoint a visiting associate judge in cases where an associate judge could not perform official duties because of military service or a vacancy in the position of associate judge.

The presiding judge could appoint a visiting associate judge until another associate judge was appointed to fill a vacancy.

HB 823 would allow an associate judge (in addition to a party) to refer a complex case back to the referring court; authorize the associate judge to render and sign any pretrial order; and explicitly allow an associate judge to recommend a ruling on a case to the referring judge.

The bill would specify that an associate judge for child protective cases would have the same powers as an associate judge under other subchapters in regard to appeal of an associate judge's orders.

A presiding judge could assign associate judges and appoint visiting judges for child protective cases pursuant to Government Code, Chapter 74, the Court Administration Act. The presiding judge could appoint a visiting judge to fill in for an associate judge when that judge had to be absent. The appointment process for visiting associate judges for child protection would be the same as for those under other subchapters.

The bill would repeal sections of the Family Code pertaining to the mandatory appointment of a master and the exemption from appointment of a master.

HB 823, as amended, would take effect September 1, 2003.

SUPPORTERS SAY:

HB 823, as amended, would clarify the duties of associate judges and the OCA and would bring Texas law in line with federal law.

Federal law has eased the time frames for child-support associate judges to dispose of cases. HB 823 simply would reflect that change at the state level. It would not reduce judicial efficiency, because judges will continue to dispose of these cases as quickly as possible. HB 823 also would eliminate confusion and save time for the court system by making it easier for judges to determine the disposition of their caseloads, because they would not have to calculate different disposition rates under state and federal law.

The bill would repeal portions of Texas law that pertain to a system that formerly existed under federal law, but no longer exists. Federal law has

changed since the enactment of the Texas statutes and no longer requires the bulk of what these statutes address.

HB 823 would clarify other areas of confusion in existing law, making the law easier to understand and apply. It would delineate the duties of associate judges under all subchapters, eliminate redundancy, and list explicitly the duties of the OCA in regard to monitoring associate judges.

The name change from "child support master" to "associate judge" would bring the provisions for judges under Chapter 201, Subchapter B in line with those under Subchapters A and B. These judges are all judicial officers who make recommendations to elected judges, and all perform essentially the same duties.

Redefining associate judges would clarify their role in the judicial system and make it easier for the state to receive federal funding. Although federal law prohibits the use of child-support funds for judges, associate judges under Texas law do not meet the federal definition of a judge. Associate judges merely make recommendations to elected district judges and cannot render final decisions. Child-support associate judges' rulings are final only if the parties do not seek a timely appeal. If their recommendations are appealed, the parties receive a new trial on the entire case before the district judge. This special review of associate judges' recommendations is not available for orders of district judges and offers extra protection to litigants.

OPPONENTS SAY:

By easing the time restrictions for disposing of child-support and paternity cases, HB 823 could delay the process of justice and prolong the waiting period for children to receive the support they deserve. Current law rightly requires these cases to be disposed of more than quickly than federal law requires as a condition of receiving federal funding.

Changing the references to judges throughout the statute could result in additional confusion. All judges under Chapter 201 would be called "associate judges" although they deal with different kinds of cases.

Designating child-support masters as "judges" could jeopardize Texas' federal funding for child-support enforcement, because federal law prohibits the use of these funds for judges. Because child-support masters can issue

recommendations that become final if not appealed, they essentially can render final decisions, as judges can.

NOTES:

The committee amendment would specify that if a presiding judge determined that an associate judge was necessary for Title IV-D cases, the presiding judge would have to appoint an associate judge unless the county already provided these services under a contract with the OAG. The committee amendment would remove a provision that would allow an associate judge to hear an appeal of that judge's order on incarceration of the respondent if the referring court were not available to hear the appeal. The committee also would amend proposed language about the powers of associate judges to specify that a judge could render and sign any pretrial order, rather than any order that was not a final order on the merits of the case.