

SUBJECT: Adding corporal punishment to parents' rights

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 5 ayes — Dutton, Goodman, Nixon, Strama, Thompson
0 nays
4 absent — Castro, Y. Davis, Dunnam, J. Moreno

WITNESSES: For — Roy Getting, Texas Fathers Alliance; Lee Spiller, Citizens Commission on Human Rights
Against — None

BACKGROUND: A parent's right to discipline a child is addressed in two statutes. Family Code, sec. 151.001, establishes the rights and duties of parents, including the duty to discipline a child reasonably, and Penal Code, sec. 9.61, permits the use of non-deadly force to discipline a child by a parent or other person acting in loco parentis.

DIGEST: HB 383 would amend Family Code, sec 151.001, to give parents, or other persons with a duty of control, the right to use corporal punishment reasonably to discipline a child.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: Parents are confused about whether corporal punishment is legal because existing law is not sufficiently clear. Undisciplined children cause social problems, such as disruption in public places and bullying of peers, but many parents hesitate to discipline children through corporal punishment for fear of being reported to the authorities as child abusers. Parents need the law to speak clearly so they may act decisively. HB 383 would help provide the needed clarity.

Spanking can be a safe, effective component of discipline, and parents should have the clear right to use it. The bill would place corporal punishment within the environment of “reasonable discipline,” and in no way would give a parent the right to abuse a child. Most parents know the difference between discipline and abuse, and existing laws prosecute those who cross that line.

Although the Penal Code now addresses corporal punishment, it does so as a defense to prosecution for child abuse. Saying corporal punishment is not a crime is different from saying affirmatively that parents have a right to use it. Most parents never will need a defense against child abuse, but they do need the right to use corporal punishment stated explicitly in law.

Parents are entrusted to make many decisions that affect their children, including methods of discipline. These decisions should be up to parents, not dictated by the state. This bill would impose no obligation on parents to use corporal punishment. It only would help remove government from that decision.

Parents are not necessarily the only adults charged with the legal duty of control for a child. For this reason, the bill grants the right to use corporal punishment to other persons charged with duty of control. Duty of control is imposed legally on a person appointed as a child’s managing conservator in Family Code, ch. 153, subchapter G, and cannot be transferred casually. The bill would not apply to the use of corporal punishment by teachers or other school personnel.

HB 383 also would give much needed legislative guidance to the courts, many of which have demonstrated confusion on the issue through inconsistent rulings.

Texas Administrative Code, Title 40, prohibits foster parents from using corporal punishment on foster children. Since HB 383 is permissive, not mandatory, it would not require the Department of Protective and Regulatory Services (PRS) to revise this rule. PRS also ensures the safety of foster children by screening foster parents to ensure their ability to discipline appropriately and to comply with minimum care standards.

**OPPONENTS
SAY:**

Although some argue that the government should not dictate a parent’s disciplinary options, government regularly intervenes in the private sphere to protect public safety and welfare. Corporal punishment should be no

exception. Corporal punishment against children can trigger criminal, anti-social, violent, and aggressive behavior; lead to higher levels of adult depression, psychiatric problems, and addiction; escalate to abusive levels in efforts to maintain effectiveness; unintentionally cause serious physical damage to the child; and teach children that it is acceptable to use violence in interpersonal relationships. Government has a clear interest in discouraging such detriments to the public health and safety, detriments that this bill actually could encourage by sanctioning the use of corporal punishment.

This bill would put foster children in particular at greater risk for abuse. It would supersede Texas Administrative Code, Title 40, part 19, rule 720.31, and could prompt revision of this rule to reflect the new statute allowing corporal punishment by those with a duty of control. Children under the managing conservatorship of the state are similar to foster children in that their caregivers may not use corporal punishment against them.

For a child who has been abused or neglected, the use of corporal punishment can hurt the trust-building process. Previously abused children also may not respond as expected to minimal levels of corporal punishment, leading the foster parent or caregiver to escalate the intensity of corporal punishment to dangerously high levels. This weakening of the protection offered by current law would harm the most vulnerable children.

Implicitly, parents often assign some of their legal rights and duties to other persons (babysitters, camp counselors, neighbors) who temporarily are in charge of their children. Because this bill would add corporal punishment to a parent's rights, it could enable other persons designated by a parent to use corporal punishment on the child.

**OTHER
OPPONENTS
SAY:**

This bill is unnecessary because parents have the right to use corporal punishment under current law. Adding another, potentially conflicting reference could just create more confusion.

NOTES:

A similar bill introduced in 2003 during the 78th Legislature, HB 374 by Dutton, passed the House but was left pending in the Senate Jurisprudence Committee.