

SUBJECT: Appeals of orders in cases involving foster care children

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 — David Curl, Tarrant County District Attorney's Office
Against — None

BACKGROUND: In 2001, the 77th Legislature enacted HB 2249 by Goodman, which changed the process for conducting permanency hearings for foster care children. One of the requirements, in Family Code sec. 263.405 (b), requires a party who intends to appeal a final order to file a "statement of points" within 15 days of the signing of the final order. The "statement of points" is a list of the issues upon which the appeal will be based.

Since that legislation took effect, appeals courts in Amarillo, Fort Worth, and San Antonio have ruled in at least seven cases that the restriction of a future appeal to the issues in the statement of points is not valid. In only one appellate case was such a restriction upheld.

Texas Rules of Civil Procedure, Rule 322, prohibits using generalities – such as that the jury verdict was contrary to law or that the court erred in excluding evidence – as grounds for objections.

DIGEST: HB 409 would prohibit an appellate court from considering any issue that was not in a timely filed statement of points. It also would establish that a claim that a judicial decision was contrary to the evidence or that evidence was insufficient would not preserve an issue for appeal.

The bill would take effect September, 1, 2005, and would apply only to appeals filed on or after that date.

**SUPPORTERS
SAY:**

HB 409 would close a loophole that can keep some foster children in legal limbo for more than a year. The average appeal in a case involving termination of a parent-child relationship takes 12 months or more and prevents the child from being available for adoption. The main purpose of the 2001 legislation was to improve permanency planning for children in foster care and this bill would help ensure that happens. Finality in termination cases promotes stability and closure for the parties involved.

The bill would not close any doors to legitimate appeals. It would make the Family Code similar to the Texas Rules of Civil Procedure, Rule 322, in that parties who wish to appeal a decision would have to give descriptive reasons for the appeal, not just challenge it on the basis of insufficient evidence. This would help judges decide which cases should get new trials and which are frivolous.

**OPPONENTS
SAY:**

These cases involve termination of a parental-child relationship and should not be rushed. A 15-day window is very short to compile enough information to mount a vigorous appeal, particularly when the reasons must be more substantial than insufficient evidence. These cases should be expeditious, but also fair.

The Legislature should let the court system work. That would require allowing adequate time to consider all matters of the law involved in a case. As some courts have said, waiving all non-jurisdictional appellate issues because of a failure to timely file a statement of points on appeal does not necessarily accomplish the goal of reducing frivolous appeals or post-judgment delays.