

SUBJECT:           Allowing possession of firearms and ammunition in foster homes

COMMITTEE:       Human Services — Reported favorably without amendments

VOTE:             6 ayes — Rose, S. King, J. Davis, Herrero, Hughes, Parker

1 nay — Naishtat

2 absent — Eissler, Pierson

SENATE VOTE:     On final passage, April 16 — 28-2 (Shapleigh, Zaffirini)

WITNESSES:       *(On House companion bill, HB 1263 by Flynn:)*

For — Conni Barker, DePelchin Children's Center; I. William R. Cox, Lighthouse Family Network; Gary Gates; Alice Tripp, Texas State Rifle Association; *(Registered, but did not testify:* Susan Craven, Texans Care for Children; Carol Miller, The National Association of Social Workers/Texas Chapter); Jennifer Talley

Against — Richard LaVallo, Advocacy, Inc.

BACKGROUND:     Human Resources Code, ch. 42 authorizes the Department of Family and Protective Services (DFPS) to regulate childcare facilities, foster group homes, and foster homes. The department adopted rules for the placement of foster children that became effective on January 1, 2007.

Texas Administrative Code, Title 40, Part 19, ch. 749, subch. O, sec. 749.2961 provides that generally weapons, firearms, explosive materials, and projectiles (such as darts and arrows) are permitted by those providing foster care. One specific restriction is that: "Weapons, firearms, explosive materials, and projectiles are not permitted at a foster home providing treatment services unless one of the foster parents is employed as a law enforcement official." Texas Administrative Code, Title 40 defines "treatment services" to include children with autism or primary medical needs such as a feeding tube. The term also covers children who have severe emotional disorders manifested by major self-injurious actions, recent suicide attempts, substance abuse, and frequent and unpredictable physical aggression.

DIGEST:

SB 322 would amend the Human Resources Code, sec. 42.042 to prevent DFPS from prohibiting the possession of lawfully permitted firearms and ammunition in a foster group home, a foster home, an agency foster group home, or an agency foster home. The department could adopt minimum standards for safety and proper storage of firearms and ammunition, including a requirement that firearms and ammunition be stored in separate locked locations.

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, 2007.

SUPPORTERS  
SAY:

SB 322 would reverse an unnecessary and intrusive DFPS rule that hinders recruiting and retaining foster families when there is growing need to treat the special needs of emotionally disturbed children. Law-abiding families should not have their Second Amendment right to bear arms limited by a bureaucratic restriction. Responsible gun owners who serve as foster parents take precautions to provide for the safety of the children in their care.

Impetus for this bill arises from the circumstances of Jay Rohus, a Grand Saline City Council member and foster parent of 14 years. Mr. Rohus and Linda, his wife, raised their own five children before accepting responsibility of a total of 90 foster children during those years. The Rohuses were named Foster Family of the Year in both 2003 and 2006. Rohus's gun collection includes a firearm owned by his now-deceased son and an antique gun given to him by his uncle. It would be unreasonable to force the family to choose between keeping the foster children and the gun collection.

Foster homes are inspected by DFPS caseworkers as often as four times a month, and Child Protective Services make monthly unannounced spot checks. Current safety rules require that medications be kept in a double-locked cabinet, and knives, power tools, cleaning supplies, pesticides and hazardous chemicals also must be locked up. SB 322 would reinforce current standards allowing a restriction that firearms and ammunition be stored separately in locked locations.

According to a July 25, 2006, report *Firearms in Foster Homes*, published by the National Resource Center for Family-Centered Practice and

Permanency Planning at Hunter College in New York, no other state, including California or New York, prohibits foster parents from possessing firearms nor does any state carve out one group of children over another in their safety plan.

No reports are available of any foster child in Texas who has been killed or injured because of a firearm kept in a foster home. There was no precipitating incident to justify DFPS's decision to adopt the rule.

OPPONENTS  
SAY:

SB 322 would override a reasonable restriction. Protecting the safety of children should rank as among the state's highest priorities, especially children with emotional disabilities who remain wards of the state. The Hunter College *Firearms in Foster Homes* report notes that the presence of a firearm in a household has been found to be associated with an increased risk for homicide, suicide, and unintentional shootings, especially among young people.

Any shortage of those willing to serve as foster parents, especially for emotionally disturbed children, can be drastically overstated. Those operating a foster home for five to six emotionally disturbed youths can net \$16,000 to \$34,000 a month, tax-free. While not discounting the sense of duty and service many foster parents feel about the children in their care, too many foster homes are run essentially as businesses. State law restricts the access of firearms, even by concealed handgun license holders, on the premises of businesses, and these foster homes should be regulated as strictly as businesses.

The Rohus family may have been exemplary and excellent foster parents, but their single example should not be used anecdotally to make sweeping changes in state regulations. Only 1,500 of the state's 19,500 foster children are affected by the new restrictions. Many of these children need the added protections provided in the new DFPS rules. In 1997, an emotionally disturbed youth in foster care took to school an unloaded gun he found at the foster home. Authorities later determined that he was suicidal and may have been intending to provoke a confrontation with law enforcement officers. He later was sentenced to the Texas Youth Commission. So it is misleading to say that no child has been harmed by the availability of a firearm in a foster home.

NOTES:

The companion bill, HB 1263 by Flynn, was considered in a public hearing by the Human Services Committee on April 16 and left pending.

