

- SUBJECT:** Standing for extended family to file suit affecting parent-child relationship
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Hunter, Hughes, Branch, Hartnett, Jackson, Leibowitz, Lewis, Martinez
- 0 nays
- 3 absent — Alonzo, Madden, Woolley
- WITNESSES:** For — Carla Garcia and Graciela Hernandez, Mujeres Hispanas Por Mejor Justicia (“Hispanic Women for Better Justice”); Stephen Harding; Dennis Moreno; Mary Moreno; Sandra Moreno; James Peplinski; Manuel Rodriquez, Jr.; (*Registered, but did not testify*: Leticia Harding; Sandra O. Martinez, Hispanic Women for Better Justice)
- Against — Constance Barker, DePelchin Childrens Center; Ken Fuller, Family Law Foundation, State Bar of Texas; Karen Langsley; Scott McCown, Center for Public Policy Priorities; (*Registered, but did not testify*: Steve Bresnen, Texas Family Law Foundation; Sarah Combs, Texas Alliance of Child and Family Services)
- On — John J. Sampson; (*Registered, but did not testify*: Liz Kromrei, Department of Family and Protective Services; Sandra Lackey, Texas Department of State Health Services)
- BACKGROUND:** Family Code, sec. 102.006 provides that if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit or suit for modification that requests managing conservatorship of the child may not be filed by:
- a former parent whose parent-child relationship with the child has been terminated by court order;
 - the father of the child; or
 - a family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or of the father of the child.

The limitations on filing suit do not apply to a person who:

- has a continuing right to possession of or access to the child under an existing court order; or
- has the consent of the child's managing conservator, guardian, or legal custodian to bring the suit.

Under limited circumstances, a child's adult sibling, grandparent, aunt, or uncle may file suit seeking managing conservatorship of the child. Sec. 102.006 restricts these circumstances to those in which a parent-child relationship has been terminated in a suit filed by the Department of Family Protective Services. The adult sibling, grandparent, aunt, or uncle must file a request for managing conservatorship within 90 days after the date the parent-child relationship is terminated.

DIGEST:

CSHB 428 would amend Family Code, sec. 102.006 to provide that the limitations on filing suit once the parent-child relationship between the child and every living parent had been terminated would not apply to persons related to the child within the fourth degree of consanguinity, including first cousins, great-uncles, great-aunts, and great-great grandparents.

CSHB 428 would also expand the types of suits a person related to a child within the fourth degree of consanguinity could file to include a suit for adoption.

This 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, 2009.

**SUPPORTERS
SAY:**

CSHB 428 would address situations in which extended family members did not know that a family member's parental rights were terminated involuntarily and the child was subsequently placed for adoption outside the family network. The bill's primary goal would be to ensure that a child raised by extended family members would remain within the family's care rather than face placement in the foster care system, which may not be in the child's best interest. Once an adoption takes place, extended family members encounter significant procedural barriers to regaining custody of a child formerly within their care. The bill would preempt these problems by providing certain extended family members legal standing to seek

managing conservatorship or adoption of a child that they have known and cared for throughout the child's life.

CSHB 428 would carefully balance the rights of extended family members to seek adoption with a child's need for a stable living situation. The committee substitute would only expand legal standing to a child's first cousins, great uncles and great aunts, and great-great grandparents, not to all relatives of a child as was originally proposed. The bill would not extend the time period for those with standing to sue beyond the current 90-day limit. Finally, the bill would not open the door to untrammelled litigation, since it would apply only to a small number of children.

OPPONENTS
SAY:

CSHB 428 would go too far by allowing relatives related to a child in the fourth degree to intervene in the child placement process. This would result only in additional, prolonged litigation that would delay the placement of a child in a stable, permanent home. The amount of time required to terminate parental rights can last up to 18 months, during which the child sits in a legal limbo and is denied the material and psychological benefits of having a steady living situation. Allowing additional litigants in child placement cases would prolong the legal process for children who otherwise would be placed in permanent homes more quickly.

CSHB 428 proposes to address a relatively rare problem for which existing law already provides a sufficient remedy. The 80th Legislature expanded the intervention rights of family members in 2007 with enactment of HB 1481 by Castro, which gave the right to intervene to grandparents, adult siblings, aunts, and uncles. This expansion gave statutory recognition to the reality that, in most child-placement cases involving extended family members, the grandparents are the intervening parties. The current law should at least be given enough time to work before broadening its provisions yet again.

NOTES:

The committee substitute would limit the right to file an original suit or a suit seeking modification to persons related to a child within the fourth degree of consanguinity, rather than persons related to a child within any degree of consanguinity, as in the original. The committee substitute also

would retain the existing 90-day limit to file an original suit or a suit seeking modification, whereas the original bill would have extended the limit to 120 days.