

SUBJECT: Prosecuting bigamy and investigating child abuse

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Morrison, Gonzalez, Hopson, Hughes, Hunter,
Naishtat, V. Taylor

1 nay — Laubenberg

WITNESSES: For — None

Against — Tim Lambert, Texas Home School Coalition; Judy Powell,
Johana Scot, Parent Guidance Center; Josh Upham

On — Don Clemmer, Office of the Attorney General; Elizabeth Kromrei,
Department of Family and Protective Services

BACKGROUND: **Bigamy.** Under Penal Code, sec. 25.01, bigamy — marriage to more than one person — is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). Bigamy is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if committed with a person age 16 years or older, and a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if committed with someone younger than 16.

The current statute of limitations for bigamy is three years. This means that charges relating to bigamy must be filed within three years of the offense.

Child abuse or neglect. The Family Code requires the Department of Family and Protective Services (DFPS) to make reasonable efforts to prevent or eliminate the need to remove a child from his or her home during an investigation of child abuse or neglect. In deciding what is a reasonable effort, DFPS's top concern must be the child's health and safety.

DFPS may remove the alleged perpetrator of abuse from the home instead of removing the child if it files a court petition showing that:

- there is an immediate danger to the health or safety of the child or the child was a victim of sexual abuse;
- there is no time for an adversary hearing;
- the child is not in danger of abuse from another parent or adult in the home; and
- issuing a restraining order is in the best interest of the child.

In deciding whether to issue an emergency order removing a child from the home, a court must consider if the child is in immediate danger, if there is no time for an adversary hearing, and if DFPS made reasonable efforts to prevent the removal of the child. The court also may consider whether the home includes a person who has abused, neglected, or sexually abused another child.

Current law does not explicitly allow or prohibit a person who had been living with the child during the abuse to continue living with the child once the child is placed elsewhere.

Birth certificate filing. The Health and Safety Code makes the failure to properly fill out and file a birth or death certificate a class C misdemeanor (maximum fine of \$500).

DIGEST:

Bigamy. CSHB 253 would extend the statute of limitations for bigamy from three to seven years, unless the victim was younger than 18, in which case it would be 10 years from the 18th birthday of the victim. The change in the statute of limitations would not apply to an offense if its prosecution was barred by limitation before the effective date of the bill.

The bill also would make bigamy with a 17-year-old a second-degree felony, and bigamy with someone 16 years old or younger a first-degree felony. An offense committed before the effective date of the bill would be governed by current law.

Child abuse or neglect. CSHB 253 would allow a court to find that, in certain circumstances, no reasonable efforts existed that would prevent DFPS from removing a child from the home. In this case, DFPS would not need to satisfy the “reasonable efforts” requirement in the Family Code.

A court could issue a restraining order to remove an alleged perpetrator of abuse from the home instead of the child if DFPS showed that, in addition

to the existing requirements, the parent or other adult remaining with the child:

- would make a reasonable effort to monitor the home; and
- would report to DFPS and law enforcement if the alleged perpetrator attempted to return to the home.

A restraining order petition removing an alleged perpetrator from a home filed before the effective date of the bill would be governed by current law.

In deciding whether to issue an emergency order removing a child from the home, a court would have to consider if the home included a person who had abused, neglected, or sexually abused another child, in addition to the existing requirements.

CSHB 253 would bar DFPS from allowing any person normally entitled to custody of a removed child from continuing to reside with the child unless:

- the person was a minor when the child was removed;
- the person and child were placed with a licensed and regulated child care provider; or
- a court ordered DFPS to allow it.

Birth certificate filing. CSHB 253 would make failure to properly fill out and file a birth certificate a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Effective date. The bill would take effect September 1, 2011.

SUPPORTERS
SAY:

Bigamy. CSHB 253 would give prosecutors a stronger tool to combat the serious crime of bigamy. Many people who are victims of bigamy do not know about it until after the three-year statute of limitations has ended. Since these cases often take longer to come to light than other crimes, the bill would extend the time that law enforcement officers have to bring charges against offenders.

Further extending the statute of limitations for child victims is necessary because these victims often do not speak out about abuse, or even know they have been abused, until they are older. Child victims often are unable

to report abuse immediately because they are traumatized, fearful, or still living with the abusers. Using the 18th birthday of the victim as the point to start the statute of limitations would match the statute of limitations for injury to a child, the circumstances of which also warrant this limit.

Although prosecutors could bring other charges against bigamists, CSHB 253 would give them another effective tool if they opted to use a bigamy charge. Prosecutors would have the flexibility to use the charges that fit the situation best and offered the most appropriate punishment.

CSHB 253 would not burden defendants unduly. Prosecutors would have to prove that a crime was committed, and defendants would be able to defend themselves. Since proving older cases would be difficult, prosecutors would use discretion and be cautious about pursuing questionable cases with weak or little evidence.

Child abuse or neglect. While in most cases, DFPS must and should make all reasonable efforts to prevent a child from being removed from the home, there are certain circumstances when no reasonable efforts exist. In these rare circumstances when the child's health and safety are in imminent danger, DFPS should be allowed to remove a child.

If DFPS files a restraining order petition for an alleged perpetrator of child abuse to be removed from the home instead of the child, the court should be satisfied that the parent or adult caring for the child would make every reasonable effort to prevent the alleged perpetrator from re-entering the home and would report any attempts to do so to law enforcement.

Abuse of other children in the home is pertinent to the health and safety of a child. Alleged perpetrators of abuse frequently are repeat offenders, and the court should consider the entire story concerning abuse in the home. CSHB 253 would require, instead of allow, a court to consider this.

When a child is removed from a home because of abuse, a person who was responsible and did not adequately care for the health and safety of that child should be prohibited from staying with the child except in certain limited instances.

Birth certificate filing. Prosecution of bigamy with a child under the age of 18 and child abuse and neglect are made more difficult when the child's birth information was never reported to the Bureau of Vital Statistics.

Failure to report this information is a class C misdemeanor, which does not sufficiently deter this practice. Making the failure to properly report a birth a class A misdemeanor would properly deter this practice.

OPPONENTS
SAY:

Bigamy. The current statute of limitation adequately balances the needs of both prosecutors and the accused. Extending the statute of limitations for bigamy could render accused persons unable to defend themselves adequately. Over time, witnesses' memories fade, and evidence becomes more difficult to obtain.

It is unnecessary to single out a certain type of bigamy for an especially long statute of limitations. Most cases involving bigamy with a child would be prosecuted more effectively under other serious offenses, such as sexual assault.

Child abuse or neglect. CSHB 253 would give DFPS far too much power to remove children from their homes and would needlessly punish innocent families across Texas.

By removing the required "reasonable effort" guidelines that are intended to ensure that DFPS takes all steps to keep children in their homes, the bill would allow the state to needlessly remove children from their families and homes.

Requiring a court to consider outside abuse cases, instead of allowing judicial discretion, would deliberately reduce the "imminent danger" standard required for removal of a child. If no imminent danger to the health and safety of a child exists, DFPS should not be allowed to remove the child from the home.

A parent or guardian who is not an alleged perpetrator of abuse should not be needlessly and unconstitutionally punished by being prevented from residing with his or her child. Being removed from a home, regardless of the circumstances, is a traumatic incident for a child, who will need support and care from his or her family.

Birth certificate filing. As with a death certificate, failure to fill out and properly file a birth certificate is already a crime as a class C misdemeanor. Increasing the penalty for this crime would be unnecessary and would not serve as a deterrent.

NOTES:

A floor amendment acceptable to the author will be offered that would strike language from CSHB 253 that would:

- allow DFPS to remove a child from a home without reasonable efforts to prevent their removal in certain circumstances;
- require a court to consider abuse, neglect, and sexual abuse of another child in the home when determining an emergency removal; and
- bar DFPS from allowing persons normally entitled to custody from residing with the removed child.

The committee substitute removed a provision in the original version of the bill that would have expanded the enforcement of compulsory public school attendance. It also removed language that would classify bigamy with a child as a first-degree felony if the alleged perpetrator was 18 years or older, and as a second-degree felony if the alleged perpetrator was under 18.