Senate Research Center   C.S.S.B. 1735
76R11682 MCK-D   By: Zaffirini
                                                                  Jurisprudence
                                                                     4/8/1999
                                       Committee Report (Substituted)

DIGEST

In 1995, Congress created the Court Improvement Project (CIP) that required each state court system to conduct an assessment of judicial proceedings regarding foster care and adoption cases. In response, the state created the Supreme Court Task Force on Foster Care, which revealed that the Texas courts and foster care systems together significantly hampered efforts to place children in foster care. The Task Force recommended and the legislature adopted legislation that restricted the duration of temporary foster care and forced courts to consider the cases more quickly. The new legislation created pressure on an already overburdened court system. CIP implemented several projects which have already had significant impact in processing child abuse cases; however, the funding is exhausted. Now, Texas courts need additional judicial resources to further administration of justice for abused and neglected children. C.S.S.B. 1735 would authorize judges of the nine administrative judicial regions of the state to appoint associate judges to handle child protective cases.

PURPOSE

As proposed, C.S.S.B. 1735 amends the appointment and duties of associate judges and child support masters.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.001(e), Family Code, to provide that this section does not apply to an associate judge appointed under Subchapter C.

SECTION 2. Amends Section 201.003(d), Family Code, to make a conforming change.

SECTION 3. Amends Section 201.004(d), Family Code, to make a conforming change.

SECTION 4. Amends Sections 201.005(c)-(e), Family Code, to require a party to file an objection to an associate judge presiding at a jury trial, by a certain date. Requires the court to preside at a jury trial, if an objection is filed. Requires the requirements of Subsections (b) and (c) to apply whenever a judge has authority to refer the trial of a suit under certain titles to certain judges regardless of whether the assistant judge is appointed under this subchapter. Deletes prohibition and other provisions against judges from referring to certain objections in a trial to terminate parental rights and regarding the action of parties who file certain objections. Deletes a requirement that a judge refer matters back to a jury before the referring court.

SECTION 5. Amends Section 201.007, Family Code, to authorize an associate judge to order an attachment to a witness who fails to obey a subpoena and to order the detention of certain witnesses. Authorizes an associate judge to refer a case back to the referring court regardless of a timely objection on hearing the merits or presiding over a jury trial. Makes conforming changes.

SECTION 6. Amends Section 201.009, Family Code, to authorize a court report to be provided during a hearing, rather providing that a court report may not be required during a hearing. Requires a court report to be provided when the associate judge presides over a jury trial or a final termination hearing. Authorizes certain individuals to provide a reporter if one is not otherwise provided. Authorizes a record to be preserved in the absence of a court reporter. Authorizes certain courts to tax the expense of

preserving the record under Subsection (c) as costs. Authorizes the referring court to consider testimony, evidence taken by a court reporter in the record, or other matters presented under Section 201.015.

SECTION 7. Amends Sections 201.011(a)-(c) and (e), Family Code, to authorize the associate judge's report to include a proposed order. Authorizes a notice to be given in the form of a proposed order. Authorizes notice to be given to the parties as a proposed order by a judge. Requires an associate judge to send the judge's proposed order to all parties after a hearing is conducted the judge.

SECTION 8. Amends Section 201.013, Family Code, to provide that the decisions of the judge are in full force pending the appeal of the judge's proposed order. Requires an order by an associate judge for temporary detention or incarceration of a witness or party to be presented to the referring court on the day of retention. Authorizes the referring court to approve the retention for up to 72 hours or to order the release regardless of bail pending an appeal. Deletes provision regarding incarceration.

SECTION 9. Amends Section 201.014, Family Code, to authorize the referring court to reject the associate judge's proposed order.

SECTION 10. Amends Section 201.015, Family Code, by amending Subsection (c) and adding Subsections (h) and (i), to authorize a court to consider the record from previous hearing before an associate judge. Provides that a party's right to file post-trial motions is not affected by a denial of an appeal or waiver of right to appeal to the referring court. Prohibits a party from demanding a second jury trial on appeal of an associate judge's report.

SECTION 11. Amends Section 201.102(b), Family Code, to delete exemptions to the provisions that Subchapter A provisions also apply to a master appointed under this subchapter.

SECTION 12. Amends Chapter 201, Family Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ASSOCIATE JUDGE FOR SUBSTITUTE CARE AND CHILD
PROTECTIVE SERVICES CASES

Sec. 201.201. AUTHORITY OF PRESIDING JUDGE. Requires the presiding judge of each administrative judicial region, after conferring with certain family law judges, to determine which courts require the appointment of a full-time or part-time associate judge to complete each case with the times specified in Chapters 262 and 263. Authorizes the presiding judge to limit the appointment and to terminate the appointment at any time. Authorizes an associate judge to serve more than one court. Authorizes two or more judges of administrative judicial regions to jointly appoint one or more associate judges to serve the regions. Requires the presiding judge to appoint an associate judge, if the judge determines that the court requires an associate judge. Requires all substitute care cases to be referred to the associate judge by general order from the judge's court or a general order from the appointing presiding judge. Provides that this section does not limit the jurisdiction of a court to issue orders under Chapters 262 or 263.

Sec. 201.202. APPLICATION OF LAW GOVERNING ASSOCIATE JUDGES. Provides that Subchapter A applies to an associate judge. Authorizes an associate judge to live anywhere within the region the judge is appointed.

Sec. 201.203. DESIGNATION OF HOST COUNTY. Requires the presiding judges of the administrative judicial regions to vote on the host county of an associate judge. Requires the host county to provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the judge. Provides that an associate judge is not required to reside in the host county.

Sec. 201.204. GENERAL POWERS AND DUTIES OF ASSOCIATE JUDGE. Authorizes an associate judge to refer a complex case to the referring court for final disposition after recommending temporary orders for the protection of a child. Requires an associate judge to take testimony and make a record in a case.

Sec. 201.205. COMPENSATION OF ASSOCIATE JUDGE. Entitles an associate judge to a salary that is determined by the presiding judges. Prohibits the salary from exceeding 90 percent of a district judge's salary that is set by the General Appropriations Act. Requires the associate

judge's salary to be paid from county funds subject to the approval of the commissioners court or the state and federal government as provided by Section 201.207.

Sec. 201.206. PERSONNEL. Authorizes the presiding judge to appoint personnel to implement and administer this subchapter. Requires the salary of the personnel to be paid from county funds subject to the approval of the commissioners court or from the state and federal governments as provided by Section 201.207.

Sec. 201.207. STATE AND FEDERAL FUNDS; PERSONNEL. Authorizes the office of court administration to contract available state and federal funds from any source and to employ personnel needed to implement and administer this subchapter. Provides that an associate judge or other personnel appointed under this subsection are state employees who earn leave time, accrue insurance and retirement benefits, and adhere to travel regulations. Authorizes the presiding judge and counties to contract for available funds from any source to reimburse costs and salaries associated with the associate judge, including state funds and public or private grants. Authorizes the presiding judges and the office of court administration cooperating with other agencies to take action to maximize federal money available to fund the associate judges.

Sec. 201.208. APPOINTMENT OF ASSOCIATE JUDGE FOR CHILD PROTECTION CASES. Authorizes the presiding judge to appoint an associate judge for a court handling child protection cases. Provides that this chapter does not limit the authority of a presiding judge to appoint visiting or retiring judges to assist in processing cases in a reasonable time.

SECTION 13. Repealer: Section 201.1085, Family Code (Discretionary Appointment of Master for Child Protection Cases).

SECTION 14. Effective date: September 1, 1999.

SECTION 15. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 4.

Amends Section 201.005, Family Code, by adding Subsection (d), to provide when the requirements under Subsections (b) and (c) should apply when a judge refers the trial of a suit to certain judges or masters.

SECTION 12.

Amends Section 201.205(b), Chapter 201, Family Code, to subject payment from the county fund to the approval of the commissioners court.

Amends Sections 201.208(a), Family Code, to delete qualifying text regarding the appointment of an associate judge if the court needs assistance to process the cases in a reasonable time.