SUBJECT: Revising the Family Code

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Goodman, Cook, Brady, De La Garza, Naishtat, Puente, Van de Putte

0 nays

2 absent — H. Cuellar, Williamson

WITNESSES: (*On original bill*)

For — Shannon Noble, Texas Women's Political Caucus

Against — David Allen Shelton, Texas Fathers Alliance

On — Robert L. Green Jr., Primary Nurturing Fathers of Texas and the Texas Fathers Alliance; Jack Tucker, Texas Fathers Alliance; Richard LaVallo, Advocacy Inc.

BACKGROUND: HB 655 by Goodman et al., a nonsubstantive revision of the Family Code, became law on April 20, 1995. While the code has been amended often it has not been substantively revised in its entirety since its codification by the 61st, 63rd and 66th Legislatures. Several recent reports have urged the Legislature to clarify the code and make its provisions consistent. These included the Texas Performance Review's 1994 report *Gaining Ground, A Partnership for Independence* issued by the Comptroller's Office and the report of the Joint Interim Committee on the Family Code.

DIGEST: CSHB 433 would substantively revise the Family Code (as it was recodified in HB 655). Major changes concern suits affecting the parent-child relationship, protection of children and increased enforcement of child support orders. Major changes would include:

Parent-child relationship. The bill would require that if a suit affecting the parent-child relationship had been filed in court, and later a suit for divorce or annulment was filed in another court, the suit affecting the parent-child relationship would have to be transferred to the court hearing the suit for dissolution of the marriage. The court hearing the dissolution of the marriage petition could render an order in the suit affecting the parent-child relationship.

When a person having the right to consent to the medical treatment of a minor cannot be contacted and that person has not been given actual notice to the contrary, a peace officer who has lawfully taken custody of a minor child could consent to medical treatment during an emergency. The peace officer would be required to have reasonable grounds to believe that minor is in need of immediate medical treatment. In addition, persons having care and control of a minor who is under the jurisdiction of the juvenile court or committed to the care of a state or county agency, physicians, dentists, hospitals or medical facilities would all be immune from liability in the treatment of the minor, except the extent of their own negligence.

Unless limited by a court order, a parent appointed as a conservator of a child would have the right to consent for the child to medical and dental care not involving an invasive procedure and the right to consent for the child to medical, dental and surgical treatment during an emergency involving immediate danger to the health and safety of a child.

A court could allow testimony of a child of any age to be taken by videotape if the child, because of a medical condition, is incapable of testifying in open court.

The bill would prohibit a party from demanding a jury trial in a suit in which an adoption is sought.

A court or an associate judge would have to appoint a guardian ad litem to represent the interest of the child immediately after the filing of the petition but before the full adversary hearing.

Appointment of an attorney ad litem would be mandatory immediately after the filing of a petition where the state has filed a petition to take custody

away from the parent(s) or to be named conservator, or where the parents are declared indigent. Attorneys ad litem could investigate to determine appropriate facts, obtain and review relevant medical, psychological and school records, and call, examine and cross examine witnesses. They would have to, if appointed to represent a child age four or under, interview the child and interview individuals with significant knowledge of the child's history and condition.

The bill requires that a court may only involuntarily terminate a parent's custody of a child by clear and convincing evidence that certain parental conducted existed including if the court finds that the parent has constructively abandoned the child who has been in the managing conservatorship of Department of Protective and Regulatory Services (PRS) or another authorized agency for not less than one year and when certain other conditions exist, and that such a termination would be in the best interest of the child.

A court would have to terminate the parent-child relationship in a suit filed by PRS, if the court found PRS has made "reasonable efforts" to return the parent and child.

A court could to order termination of the parent-child relationship in a suit filed by the department if the court finds that PRS has been the temporary or sole managing conservator, rather than the permanent managing conservator.

If PRS is appointed managing conservator of a child, the order could include for the continuation of the attorney ad litem appointment for a period of time determined by the court.

The bill provides that a court-appointed volunteer, a board member or employee of a volunteer advocate charitable organization or a member of an administrative review board is not liable for civil damages due to a recommendation made or opinion rendered while serving in an official capacity unless the act or failure to act was wilful, committed with conscious indifference or with reckless disregard.

In a suit in which adoption is requested or possession of or access to a child is an issue and in which PRS is not a party and has no interest, the could would be required to appoint a private agency or person to conduct a social study.

A Texas court could issue a temporary order to protect a child in this state who is subject to another state's jurisdiction, provided that the temporary order expires on the 91st day after it was entered or until the out-of-state court of competent jurisdiction issues its own order, whichever takes place first.

A court could replace a joint managing conservatorship with a sole managing conservatorship if the child's present living environment may endanger the child's physical health or significantly impair the child's emotional development. A court could modify an order that designates a sole managing conservator of a child 12 or older, if the child has filed in writing with the court the name of the person who is the child's choice to be managing conservator and the court finds that such an appointment would be in the child's best interest.

If a party to a pending custody suit makes a report alleging child abuse by another party to the suit that the reporting party knows in false, the court would be required to classify the report to be knowingly false. Such false reporting is admissible as evidence in a custody suit between the parties.

The bill would prohibit the court form holding the respondent to an action in contempt if the respondent who was personally served with a hearing notice fails to appear at the hearing. The court, however, could enter a default judgment and issue a arrest warrant for the respondent.

Child support. The bill makes a person owing child support who is more than 30 days late in paying child support, as well as the business entity in which the person owing support is a sole proprietor, partner, shareholder or owner with an ownership interest of at least 25 percent ineligible to receive state contracts, loans or grants until all arrearage have been paid or the person owing child support is in compliance with a written repayment agreement or court order as to any existing delinquency.

It adds a provision requiring that any application for a contract, grant or loan paid from state funds include the name and social security number of the individual or sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. The application, contract or bid would include standard language stating that if the entity or person holding a state contract is found to owe child support, the contract could be terminated, the vendor would be liable to the state for attorney's fees, including the cost of readvertising and reawarding of the contract.

Requires that each licensing authority, agency administering a contract providing for a payment of state funds and agency administering a state-funded grant or loan to make certain requests of applicants to assist in the administration of law relating to child support enforcement, including obtain an applicant's social security number, to be used confidentially only for child support enforcement purposes.

The state attorney general would issue an order to suspend the professional, occupational, motor vehicle, hunting or fishing license or other recreational permits or licenses of persons who are behind in child support payment equal to or greater than the total support due for 90 days. This order would be issued only after the person owing support has been provided an opportunity to make payments toward the past due child support under an agreed or court ordered repayment schedule and had failed to comply with the terms. Licensing authorities would be required to provide certain information to the attorney general for each individual who holds, applies for, or renews a license upon request.

The person owing support, upon notice, could request a hearing within 20 days after the date of service of notice. The notice would also have to include information stating that an order suspending the license shall be rendered on the 60th day after the date of service unless by that date:

• the attorney general received proof that all the arrearage and the current month's child support obligation have been paid;

• the child support agency or obligee filed a certification that the obligor is in compliance with a reasonable repayment schedule; or

• the obligor appeared at a hearing and showed that the request for suspension should be denied or stayed.

The request for a hearing would stay the suspension of the license pending the hearing. After a final order suspending a license, an order would be forwarded to the appropriate state agency, which would in turn verify the license, record and report the suspension and demand surrender of the license.

A court could order either one or both parents to make child support payments in a proceeding where PRS is named temporary managing conservator of a child whose parents' rights have not been terminated.

The bill provides for writs of withholding to be sent to employers and subsequent employers, provisions for employers to request a hearing and authorizing the person owing support whose employer receives a writ to request a hearing. It authorizes the court clerk to charge a fee of up to $15 for each writ issued and delivered to an employer by mail. A person owing child support and the person owed child support could file a notarized request with the clerk of courts for an agreed to termination or reduction in child support payments. The court could deduct state income tax from the resources available upon which to determine net money available to pay child support.

Local registries at the county level could forward a child support payment to an address and in care of a person or entity designated by the person who is owed the child support payment. The local registry could require that the person making the request be in writing or be made on a form provided by the local registry f but may not charge a fee for receiving the request or redirecting the payments as requested.

A 12 percent simple interest rate per year would apply on money judgments for retroactive and lump-sum child support payments accruing from the date an order is rendered until the date the order is paid.

A court that renders a child support order when there are arrearage could retain jurisdiction until the arrearage are paid in full.

Paternity. In suits affecting the parent-child relationship, the presumption that a man is the "biological father of a child" could be contested by a man presumed to the father of the child, who could contest his own or another man's presumed paternity or by a man alleging himself to be the biological father of the child or could be contested by certain agencies.

The party denying a presumed father's paternity of the child would have the burden of rebutting the presumption of paternity by clear and convincing evidence.

The court could dismiss with prejudice a claim regarding a presumed father whose paternity is excluded by scientific evidence.

When two or more presumptions are in conflict, the court would be required to always find that the presumption of paternity will always be weightier for a presumed father who is not excluded as the biological father by scientifically accepted paternity testing that shows that at least 99 percent of the male population is excluded.

The bill would impose a two-year statute of limitations period for claims contesting the presumption of paternity by a man who is not the presumed father but who claims to be. The legislation provides that these case would be required to be dismissed by the court when the suit is filed more than two years after either the birth of the child or two years after the presumption of paternity came into existence and the presumed father resides in the same household as the child in a "father/child relationship" and the presumed father requests an order designating himself as the father of the child.

A suit contesting the presumption that a man is the biological father of a child could be filed at any time during the minority of the child by the biological mother of the child, a presumed father or a governmental entity.

If the presumption of paternity was rebutted, the court would be required to enter an order finding that the man presumed to be the father of the child is not the biological father of the child.

When a mother of a child is not married to the father, whoever is responsible for the filing of the birth certificate would be required to give both the mother and father an opportunity to sign the birth certificate and to provide written information about establishing paternity, including an explanation of the rights and responsibilities of acknowledged paternity and information about the availability of services to the child's mother and father.

Reporting of abuse or neglect. An individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with a child, including a teacher, nurse, doctor or day-care employee must report the suspected abuse or neglect and cannot delegate to or rely on another person to make the report.

The required reporting would apply without exception to an individual whose personal communications could otherwise be privileged including an attorney, a member of the clergy, a doctor, social worker and mental health professional.

The identity of an individual making a report of abuse or neglect is to be confidential and could not disclosed unless my an order of a court or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

The bill deletes the requirement that mandated reporters report a child's school truancy, or a voluntary absence from home without a parent's consent. The bill would require that reports of abuse or neglect involving a person responsible for a child's care, custody or welfare be reported to PRS, which would have to make a prompt and thorough investigation to substantiate the accuracy of the report.

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect who testified or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect would be immune from civil or criminal liability that might otherwise be incurred or imposed.

Immunity from civil and criminal liability would extend to an authorized volunteer of the department or a law enforcement officer who participates in an investigation at the department's request if the person was acting in good faith and in the scope of the person's responsibilities.

A person who self-reports abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect in not immune from civil or criminal liability.

Reports of alleged or suspected abuse, the identity of the person making the report and certain files, records, communications and working papers are confidential and not subject to the Open Records Act. A court could order the disclosure of confidential information under certain specific circumstances.

PRS, before an investigation is completed, would have to file a petition or take other action to provide temporary care and protection of a child when the department believes that the immediate removal of a child from the child's home is necessary to protect the child from further abuse or neglect.

PRS would have to investigate a report of abuse in a facility operated by, regulated by, or providing services under a contract with the Texas Department of Mental Health and Mental Retardation (TxMHMR), under rules developed jointly between the PRS and TxMHMR.

A report of alleged abuse or neglect in a county juvenile detention facility would be required to be made to a local law enforcement agency for investigation.

PRS would have to investigate alleged abuse or neglect that takes place in a public or private school under the jurisdiction of the Central Education Agency (CEA) and send a written report to CEA and the local school board or local governing body for appropriate action. PRS would be required to provide a copy of the report and investigation findings to the parent or guardian of the child.

Other provisions. The bill would change what is required when petitioning a court seeking to take a child into temporary custody, requirements for

court to follow when granting custody and hearing requirements; enacts provisions regarding contracting between the attorney general and Texas CASA and requires that no more than 12 percent of the funds appropriated for the operation of Texas CASA can be spent for administrative purposes by CASA.

The bill would repeal from the Family Code (as amended by HB 655) sec. 105.006 (f), relating to information in the final order for child support, and sec. 264. 612 (c), relating to the amount of the legislative appropriation that the attorney general may use for administration of the CASA program.

The act would take effect September 1, 1995, and apply to a pending suit affecting the parent-child relationship without regard to whether the suit was commenced before, on or after the effective date.

NOTES:

During the first five years the bill would yield a probable savings in general revenue of $541,000 a year over a five-year period and a gain in the child support retained collection account of about $6.6 million in 1996 and $10.6 million in the year 2000, according to the fiscal note. The bill may require the attorney general to hire additional staff to assist with increased child support collections.

The committee substitute makes significant substantive changes to HB 433. Many sections of the original bill were deleted, including providing standing for foster parents; provisions relating to parental liability, dealt with in a separate bill; and Childrens Advocacy Centers, which are dealt with in HB 2571, also on today's calendar. The bill added several sections such as provisions regarding guardians and attorneys ad litem, immunity provisions and confidentiality of information.

The companion bill, SB 7 by Harris, passed the Senate by 31-0 on May 4 and has been referred to the House Committee on Juvenile Justice and Family Issues.