

SUBJECT: Revising procedures for suits affecting parent-child relationships

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt
0 nays
1 absent — Pickett

WITNESSES: For — None
Against — None
On — Charles G. Childress, Texas Department of Protective and Regulatory Services; John J. Sampson

DIGEST: CSHB 1622 would revise Family Code provisions for suits affecting parent-child relationships.

Deadlines to file suits affecting parent-child relationships. CSHB 1622 would set deadlines for the filing suits affecting parent-child relationships. For persons who have had care, control, and possession of a child for at least six months to file suit for custody or visitation, their six months of possession would have to have ended within 90 days of filing the petition. Certain persons with whom the child and the child's guardian or parent had lived for at least six months would have to file a petition for custody or visitation within 90 days of the child's residing with the petitioner.

Foster parents would be able to file suit if the child had been in their home for at least 12 months, rather than the current 18 months. The 12 months would have to have ended within 90 days of filing the suit.

These time periods would not have to be continuous and uninterrupted, and a court could consider the child's principal residence during the relevant time frame.

Terminating parent-child relationships. CSHB 1622 would add to the list of offenses for which conviction could result in courts involuntarily terminating parent-child relationships. Courts could terminate parent-child relationships if the parent had been convicted of or placed on community supervision (probation) for the death of a child by manslaughter under the Penal Code or the Family Code juvenile justice provisions.

To terminate relationships based on a parent's imprisonment, the parent would have to be convicted of an offense in addition to current requirements that the parent be imprisoned and unable to care for the child. These provisions would also include persons confined in facilities other than prisons.

Court authority to terminate parent-child relationships if the parent refused to submit to a court order relating to child welfare services would be replaced with authority to terminate if the parent refused to submit to an order relating to an investigation for child abuse or neglect.

Miscellaneous. Attorneys ad litem – appointed to represent a child for the purposes of a suit – would be entitled to expenses set by the court, in addition to the current entitlement for fees. Attorneys ad litem would be required to become familiar with the American Bar Associations standards of practice for attorneys who represent children in abuse and neglect cases

To change a sole managing conservatorship into a joint managing conservatorship, a court no longer would have to find that retention of a sole managing conservatorship would be detrimental to the child's welfare.

CSHB 1622 would apply to temporary injunctions the same guidelines used for temporary restraining orders as far what does *not* have to be in the order.

CSHB 1622 would take effect September 1, 1999, and apply only to suits filed on or after that date.

SUPPORTERS
SAY:

Deadlines to file suits affecting parent-child relationships. Guidelines need to be set to ensure that certain persons who have standing to file suits for child custody or visitation take action within a reasonable amount of time. It could be inappropriate and harmful to a child for certain persons to try and

assert rights to a child possibly years after a relationship with the child. CSHB 1622 would establish reasonable deadlines to ensure that certain persons other than parents who care for children take action while they still have a viable relationship with the child. The deadlines in CSHB 1622 would apply only to certain persons other than parents and would not affect the ability of parents or governmental entities to file suits.

Lowering the time limit that foster parents must have a child in their homes before they can file suit could help move children from foster care to adoption sooner while still ensuring the child and foster parents have a substantial relationship if a foster parent is going to file suit for custody or visitation.

Requiring that time of possession does not have to be continuous but that courts should consider the child's principal residence would help ensure fair consideration of a relationship by the courts. For example, if an aunt had cared for a child for a year, then the child went to visit parents during a school break, the aunt would not lose the ability to file a suit.

Terminating parent-child relationships. Manslaughter should be added to the list of crimes that can result in the termination of a parent-child relationships because of the seriousness of this crime. It would be appropriate and consistent to include manslaughter with the current group of offenses that include murder, indecency with a child, and assault. However, adding intoxication manslaughter would be inappropriate since this offense, although tragic, is not of the intentional, violent nature of the other offenses currently on the list.

CSHB 1622 would clarify current law concerning termination of parent-child relationships based on a person's long-term incarceration by requiring that persons would have to be convicted as well as incarcerated and would include persons incarcerated in facilities such as state jails as well as prisons.

The bill would replace an incorrect reference to the child welfare services with the correct one, allowing courts to terminate relationships if parents refused to submit to court orders concerning child abuse or neglect investigations.

Miscellaneous. CSHB 1622 would ensure that courts could pay attorneys at litem for expenses relating to their representation of a child, which sometimes is done already. However, CSHB 1622 would not affect payments for guardians ad litem because their payment system works well now and any change would unnecessarily and unwisely alter the nature of this position.

CSHB 1622 would put requirements to move sole managing conservatorships to joint conservatorships on equal grounds with requirements to change joint managing conservatorships to sole conservatorships by removing a requirement that courts find the retention of a sole managing conservatorship would be detrimental to a child's welfare.

OPPONENTS
SAY:

Deadlines to file suits affecting parent-child relationships. It would be unfair to apply deadlines to file suits affecting parent-child relationships for select groups of persons who currently have authority to file an original suit at any time. All persons should continue to be able to file suits at any time, allowing the courts to determine the best interests of the child when deciding the suits.

Terminating parent-child relationships. Intoxication manslaughter should be included in the list of offenses that can lead to termination of a parent-child relationship. Causing someone's death while intoxicated is a serious crime on a par with others currently in statute.

OTHER
OPPONENTS
SAY:

CSHB 1622 should include authority for courts to pay fees and expenses for guardians ad litem as well as for attorneys ad litem. Those who are appointed to represent the interest of a child in suits to terminate parent-child relationships should be on equal footing with attorney at litem and receive compensation.

NOTES:

The committee substitute deleted from the original bill authority for courts to award fees and expenses to guardians ad litem. The original bill would have required for certain persons filing suit affecting parent-child relationships that their six-month relationship with the child have been within a 12-month period that ended within 90 days of filing the petition.