

SUBJECT: Revising Family Code provisions affecting the parent-child relationship

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama
0 nays
4 absent — Y. Davis, Dunnam, J. Moreno, Thompson

WITNESSES: For — Judge Tom Stansbury, Texas Family Law Foundation
Against — None
On — Harry Tindall

DIGEST: CSHB 260 would amend provisions in the Family Code relating to the parent child-relationship.

For mandatory transfers of suits affecting the parent-child relationship, on a filing of a motion showing that a suit for dissolution of marriage of the child's parents had been filed in another court and request had been made to transfer the suit affecting the parent-child relationship to that court, the court with jurisdiction over the suit would have to transfer the proceeding to the court where the suit for dissolution of marriage was pending within the time required. On the motion of a party, the court would make a timely transfer of a proceeding to another county in the state if the child had resided there for six months or longer.

A motion to transfer a suit affecting the parent-child relationship could be filed at any time. The motion would include a certification that all other parties, including the attorney general, if applicable, had been informed of the filing. If a timely motion to transfer were filed and no controverting affidavit were filed, the proceeding would be transferred without a hearing to the proper court within 21 days after the final date of the period allowed for the filing of a controverted affidavit. If a hearing were conducted, the court would have to transfer the proceeding to the proper court no later than 21 days after the date the hearing was concluded. On the signing of

an order of transfer, the court would send the pleadings in the pending proceeding and other document specifically requested by the party to the proper court.

CSHB 260 would redefine assisted reproduction to mean a medically supervised method of causing pregnancy other than sexual intercourse.

The bill would modify the standard used to determine whether grandparents or other persons have standing to file or intervene in suits affecting a child, or whether the court could render a temporary order changing the designation of the person with exclusive right to designate the primary residence of a child under a suit for modification. Under the bill, grandparents or other persons would have standing, or courts could render the temporary order with satisfactory proof that the standing or change was necessary because the child's circumstances would significantly impair the child's physical health or emotional development.

The bill would require prospective adoptive parents that had been conferred standing, a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment, and a person who had received consent to adoption in writing, to receive service of citation on the filing of a petition in an original suit affecting the parent-child relationship.

If a party, the amicus attorney, or the attorney ad litem for a child filed an application during a hearing, CSHB 260 would require the court to interview in chambers a child of 12 or older and would allow the court to interview in chambers a child younger than 12 to determine the child's wishes concerning who should serve as the child's conservator, or the person with the exclusive right to determine the child's primary residence. The court could interview the child concerning the child's wishes as to any other issue in a suit affecting the parent-child relationship. An interview would not diminish the court's discretion in determining the best interests of the child. In a jury trial, the court could not interview the child in chambers regarding an issue on which a party was entitled to a jury verdict. When a court was allowed to interview a child, the amicus attorney or the guardian ad litem could be present and could file a motion to the court to have the interview recorded if the child was 12 or older.

When considering whether appointing parents as joint managing conservators was in a child's best interest, the court would have to take

into account the child's preference, if the child were at least 12, on who would have exclusive right to designate the child's primary residence.

Concerning parentage under a validated gestational agreement, the gestational mother or appropriate state agency could file notice of the birth of the child with the court if the intended parents failed to do so. Under the bill, the court would order that the intended parents were the child's parents and were financially responsible for the child on a showing that an order validating a gestational agreement was rendered.

The bill would take effect on September 1, 2005, and would apply only to an original suit affecting the parent child relationship, a suit for modification, or a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date.

**SUPPORTERS
SAY:**

The general purpose of CSHB 260 is to make technical corrections where inconsistencies or outdated terminology exist in the Family Code. The bill would make the terminology more consistent and better reflect current practice and case law. It would provide necessary changes and clarifications to ensure a more uniform and efficient execution of family law in the state.

CSHB 260 would make only a few substantive changes, including changes related to motions to transfer suits affecting the parent-child relationship. These changes would provide a more effective and timely transfer that would benefit all parties involved, especially the children.

**OPPONENTS
SAY:**

Limiting the definition of assisted reproduction to only medically supervised methods of causing pregnancy other than sexual intercourse would raise new questions. In some situations, assisted reproduction involves an informal, artificial insemination where a man voluntarily, and without medical supervision, contributes sperm for insemination of the woman with no intent to become a parent. That relationship should be honored in the law. However, under this bill, if such an arrangement were not considered assisted reproduction because it was not medically sanctioned, it could create an unintended parent when there was no intent to create such a relationship at the time of the donation.

NOTES: CSHB 260 modified the original by removing provisions dealing with the right of grandparents to petition for possession or access to a grandchild.