

SUBJECT: Extending jurisdiction for youth “aging out” of foster care services

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Rose, Herrero, Darby, Hernandez, Hughes, Legler, Naishtat, Walle

0 nays

1 absent — Elkins

WITNESSES: *(On original version):*

For — Key Richardson; M. Madison Sloan, Texas Appleseed;
(Registered, but did not testify): Christine Gendron, Texas Network of Youth Services; Noelita Lugo, Texans Care for Children; Diana Martinez, TexProtects, The Association for the Protection of Children; Tara Snowden, Child Advocates San Antonio; Andrea Sparks, Texas CASA; Monica Thyssen, Advocacy, Inc.)

Against — *(Registered, but did not testify):* Lauren DeWitt, R.Ph., Citizens Commission on Human Rights; Johana Scot, Parent Guidance Center)

BACKGROUND: Family Code, subtitle E, ch. 263 regulates the protection and review of placement of children under the care of the Department of Family and Protective Services (DFPS) and Child Protective Services (CPS).

Foster care is the child welfare system used when children need to be removed from their home due to abuse or neglect and there is no appropriate family member, relative, or family friend willing or able to care for them. Under these situations, a court will ask CPS to place the child in a temporary foster care setting until the child is able to either return to live with a parent or be adopted into a permanent family. Foster care is meant to be a temporary placement for children until a permanent home can be found, but when no other preferable option develops, a long-term foster placement can occur. When a child in long-term foster placement turns 18, the child is released from foster care, or “ages out.”

Probate Code, sec. 601(14)(b) defines an “incapacitated person” as an adult who is substantially unable to provide food, clothing, or shelter for himself or herself, or to care for the individual’s own physical health or financial affairs, due to a physical or mental condition.

DIGEST:

HB 704 would amend the Family Code by adding subch. G establishing extended jurisdiction of a foster child after the child’s 18th birthday.

The bill would allow a young adult to request a court that had continuing, exclusive jurisdiction over the young adult on the day before that person’s 18th birthday to render an order extending jurisdiction over the young adult. A “young adult” would be an individual between 18 and 21 years of age who:

- was in the conservatorship of DFPS on the day before the individual’s 18th birthday; and
- after the individual’s 18th birthday, resided in foster care or received transitional living services from DFPS.

A young adult who consented to the continued jurisdiction of the court would have the same rights as any other adult of the same age. The extended jurisdiction of the court would terminate on the young adult’s 21st birthday or the date the young adult, in writing or in court, withdrew consent to the court’s extended jurisdiction, whichever occurred first.

If the court found the young adult to be incapacitated under Probate Code, sec. 601(14)(b), the court could extend its own jurisdiction without the person’s consent in order to allow DFPS to refer the young adult to the Department of Aging and Disability Services (DADS) for guardianship services. The extended jurisdiction of the court in this instance would be terminated when DADS determined guardianship was not appropriate, a probate court denied the application to appoint a guardian, or a guardian was appointed, whichever occurred first. If DADS determined a guardianship was not appropriate, or the probate court denied the application to appoint a guardian, the original court could continue its jurisdiction over the young adult. HB 704 would prohibit a court from appointing DADS as the managing conservator or guardian of a young adult.

HB 704 would allow a guardian appointed for a young adult to request that the court extend its jurisdiction over that person, but the court in this

instance could not issue an order that conflicted with the probate court with jurisdiction over the guardianship proceeding.

Under the bill, a court with extended jurisdiction could renew the appointment of the young adult's attorney ad litem, guardian ad litem, or volunteer advocate to assist the young adult in accessing and receiving services from DFPS or other public or private providers. The attorney or guardian ad litem for a young adult receiving services at home or in a state institution would work to ensure that the young adult was receiving the appropriate services from the provider, institution, or state agency.

The bill would prohibit a court from ordering DFPS to provide a service to a young adult unless DFPS was authorized to provide the service under state law and was appropriated sufficient funds to provide the court-ordered service while complying with the department's obligations to provide similar services to other young adults.

The court could hold periodic hearings to review the services provided to the young adult, such as transitional living services provided by DFPS. Before a review hearing, DFPS would have to provide the court with a copy of the young adult's plan of service and voluntary foster care agreement or transition plan if the person was receiving transitional living services. The court would review the plan of service and voluntary foster care agreement or transition plan and determine whether DFPS and applicable service providers were providing appropriate services. If the court found that the young adult was entitled to additional services, the court could order DFPS to take appropriate action to ensure the young adult received the services.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 704 would clarify existing law by allowing judges to ensure that youth aging out of foster care could access services for which they were eligible and continue to receive support from DFPS, the courts, and their court-appointed special advocate (CASA). Current law does not prohibit the extension of service, yet it does not expressly allow it either. Some state judges exercise the option as an extension of their authority to continue court-ordered child support after a child's 18th birthday. HB 704 would

end the confusion and explicitly allow Texas courts to assist these young adults.

The bill would not establish a mandatory program. Judges would not be required to extend jurisdiction in every case. In order for the court extension to occur, a young adult aging out of foster care would have to voluntarily request the extension or a court would have to find the young adult legally incapacitated, in which case court jurisdiction would be only temporary while a referral was made to DADS or a guardian was appointed.

Self-determination would be a key element of the process. If guardianship were denied, jurisdiction would continue only with the young adult's consent. If guardianship were granted, jurisdiction would only continue with the young adult's consent. However, when a young adult had a guardian, the probate court orders would take precedence over family court orders, in keeping with due process requirements and the guidelines of probate/adult guardianship laws.

Recent studies have shown that children who age out of foster care often do not fare well on their own. Many of these young adults end up homeless or in jail without help. Within intact families, children who turn 18 years old rarely are placed out on the street to suddenly and completely provide for themselves. This would be difficult for any 18-year-old to do and may be even more difficult for children who have had the challenges sometimes associated with foster care.

Over the last three years, more than 4,000 children aged out of foster care in Texas. Without help, these children have higher rates of homelessness, unemployment, drug addiction, and teen pregnancy, whereas those who receive assistance are more likely to graduate from high school, attend college, and ultimately lead productive lives. HB 704 would provide young adults with the benefit of a continued relationship with a judge, guardian, or CASA to help prepare them for adulthood and guide them to appropriate services over the three years following their 18th birthday, thus making the transition to adulthood and independent living smoother and more successful by providing these children with continued support.

**OPPONENTS
SAY:**

The court jurisdiction imposed by HB 704 would be invasive and unnecessary. It is not clear why young adults who are over 18 years of age should remain under a court's jurisdiction. The state simply could

provide services to these individuals through another human service program and provide monitoring and assistance without having legal jurisdiction over them.

NOTES:

The committee substitute differs from the bill as filed by replacing the term “child” with “young adult” and stating that a young adult would have to request an extension of the court’s jurisdiction, but that a court could refer the young adult to DADS upon determining the individual was incapacitated.

The committee substitute also added that a guardian could request an extension of court jurisdiction and that, when a guardian was involved, an order by the probate court would take precedence over an order by the family court.

The committee substitute also addressed situations in which a court’s jurisdiction would terminate, the court’s authority to extend or renew an attorney ad litem, guardian ad litem, or volunteer advocate to work on behalf of the young adult, and the requirement of periodic hearings to review a young adult’s services.

A similar bill, SB 984 by Davis, was referred to the Senate Health and Human Services Committee on March 9.