

(The House considered SB 1838 by Patrick, the Senate companion bill, in lieu of HB 494, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 1838.)

HOUSE  
RESEARCH

ORGANIZATION bill analysis

5/7/2009

HB 494  
Zerwas, et al.

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SUBJECT: Termination of parental rights based on solicitation of or attempted murder

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hunter, Alonzo, Branch, Hartnett, Madden, Martinez, Woolley

0 nays

4 absent — Hughes, Jackson, Leibowitz, Lewis

WITNESSES: For — Shelley Ferrill; Andy Kahan, Mayor of Houston Crime Victims Office; Jacqueline Pontello, Aid to Victims of Domestic Abuse; *(Registered, but did not testify: Mary Lou Ferrill; Kevin Petroff, Harris County District Attorney's Office; Aaron Setliff, The Texas Council on Family Violence; Paul Starr)*

Against — None

BACKGROUND: Under the Family Code, sec. 161.001, a court may order the termination of the parent-child relationship under a variety of circumstances, including if the parent has been convicted of the murder of the other parent of the child.

DIGEST: HB 494 would amend the Family Code, sec. 161.004, by adding attempted murder and solicitation of murder to the list of circumstances under which a court could order the termination of the parent-child relationship.

This bill would take effect on September 1, 2009.

SUPPORTERS SAY: HB 494 would extend existing state family law policy on murder to cover attempt and solicitation as well. Existing law is glaringly inconsistent in that parents convicted of the murder of the other parent face the termination of their parental rights on that ground, but parents convicted of the attempt or solicitation of the murder of the other parent do not. HB 494 would give families the ability to pursue termination of parental rights

without first having to wait for the perpetrator to be sentenced and incarcerated and then for a court to declare abandonment of the child or other grounds that would allow for the parent-child relationship to be severed.

HB 494 would spare the victim and the victim's children the emotional and evidentiary burdens of court proceedings in which they would be forced to prove the perpetrator's actions fit within one of the existing grounds for termination of the parent-child relationship. While the victim could attempt to prove that solicitation of or attempted murder constitute grounds for termination, the victim should not be the one required to prove this. If the perpetrator has been found guilty, that alone should be sufficient. Otherwise, the victim and children can face a severe emotional toll proving their case. The law already considers evidence of a conviction of murder to be sufficient grounds; solicitation and attempt should be sufficient as well.

HB 494 would not require the termination of the parent-child relationship. Family Code, sec. 494 states that a court may terminate the parent-child under certain circumstances. HB 494 only would add solicitation of and attempted murder to that list of circumstances. The judge would still have full discretion to weigh evidence appropriately.

**OPPONENTS  
SAY:**

While it is difficult to imagine circumstances where it would be appropriate to allow the parent-child relationship to continue when one parent attempted to murder the other, situations may occur that might warrant a full hearing by a family court, where both sides are allowed to present evidence. The perpetrator might have a history of serious mental illness or other mitigating circumstances that a court may wish to consider before taking the serious step of severing a parent-child relationship.

**NOTES:**

The companion bill, SB 1838 by Patrick, passed the Senate by 31-0 on April 16 and was reported favorably, without amendment, by the House Judiciary and Civil Jurisprudence Committee on April 30.