

- SUBJECT:** Limiting or terminating parental rights after certain sexual offenses
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, Raymond, S. Thompson
- 0 nays
- 1 absent — Hernandez Luna
- WITNESSES:** For — Chris Kaiser, Texas Association Against Sexual Assault; Carlos Salinas, Alliance for Texas Families; (*Registered, but did not testify:* Melissa Gardner, Texans Care for Children; Marshall Kenderdine, Texas Pediatric Society; April Wilson, TexProtects and The Texas Association for the Protection of Children)
- Against — None
- BACKGROUND:** Family Code, sec. 161.007, allows a court to terminate parental rights if a parent is convicted of a sexual offense that resulted in a pregnancy.
- Penal Code, sec. 21.02, governs the continuous sexual abuse of a child. Penal Code, ch. 22, establishes the offenses of sexual assault and aggravated sexual assault. Sec. 25.02 prohibits sexual conduct with family members.
- DIGEST:** CSHB 1228 would require a court to limit or terminate parental rights if there were evidence of sexual abuse or a sexual offense resulting in a pregnancy.
- Conservatorship.** When determining whether to appoint a party as sole or joint managing conservator of a child, the court would have to consider evidence of sexual abuse committed within two years of the suit against the party's spouse, a parent of the child, or a person younger than 18. The court would have to consider sexual abuse when determining whether to deny, restrict, or limit a possessory conservator's possession of a child.

Access to a child. A court could not allow a parent to have access to a child if it were shown by a preponderance of the evidence that a victim conceived a child as the result of a sexual offense by the parent. In spite of this conduct, a court could allow a parent to have access to a child in certain situations.

Termination of parental rights. A court would have to order termination of parental rights if it were shown by clear and convincing evidence that a victim conceived a child as the result of a sexual offense by the parent and termination was in the best interest of the child.

If the parent was married to or living with the victim, a court could order termination of parental rights if, by clear and convincing evidence, all four of these applied: (1) the parent was convicted of a sexual offense, (2) and a child resulted from the offense, (3) and that child is less than 2 years old, (4) and termination is in the best interest of that child.

Child support. If a child was conceived as a result of a sexual offense, a court could order a parent who was financially able and whose parental rights have been terminated to pay child support.

Effective date. This bill would apply only to suits affecting parental rights that were filed or pending in a trial court on or after the effective, but the bill could be used to modify court orders that affected possession of or access to a child issued before the effective date.

This bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 1228 would protect victims who become pregnant as the result of a sexual offense. If a parent is not convicted for the offense, current law allows the parent to petition a court for parental rights. Due to plea bargains, prosecutorial discretion, and fearful victims, convictions for sexual offenses are rare and take long to achieve. As a result, some victims are forced to endure a lifelong relationship with their attackers. By allowing a court to terminate parental rights with clear and convincing evidence, rather than a conviction, this bill would protect victims and their children.

This bill would not encourage false allegations of sexual abuse because proving the allegations by clear and convincing evidence is a very difficult

burden. If the allegations were false, the accuser would probably not succeed. This bill would not apply if the parent and victim remained together for two years after the child's birth, further protecting against false allegations.

CShB 1228 would not circumvent due process procedures. If acquitted of the sexual offense in a criminal trial, the parent could petition the court to restore parental rights and present evidence of the jury's findings. Moreover, this procedure is not unprecedented – convictions are not required for parental right terminations due to drug abuse, abuse, neglect and abandonment.

**OPPONENTS
SAY:**

CShB 1228 would make it easier to terminate parental rights and could encourage false allegations of sexual abuse to win custody of a child. Further, limiting parental rights without a conviction would circumvent the due process of a criminal trial, especially if the parent was acquitted of the sexual offense by a jury.