

BILL ANALYSIS

C.S.H.B. 1228
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been reported that thousands of women in the United States become pregnant from rape each year. Noting a recent law journal article written by a lawyer who battled her rapist in court over visitation rights for the child that resulted from the rape, interested parties assert that few states have passed laws to aid the large number of women who become pregnant as a result of sexual assault and choose to carry their pregnancies to term. These parties contend that without such laws, a man who fathers a child through sexual assault can have the same custody and visitation privileges to that child as any other father. C.S.H.B. 1228 seeks to address this inequity by providing women who become pregnant as the result of sexual assault with more legal rights.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1228 amends the Family Code to include among the evidence a court is required to consider in a suit affecting the parent-child relationship in determining whether to appoint a party as the child's sole or joint managing conservator evidence of sexual abuse by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit. The bill requires the court to consider the commission of sexual abuse, in addition to considering the commission of family violence, in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator.

C.S.H.B. 1228 prohibits the court from allowing a parent to have access to a child for whom it is shown by a preponderance of the evidence that the parent engaged in conduct that constitutes an offense of continuous sexual abuse of a young child or children, sexual assault, aggravated sexual assault, or prohibited sexual conduct and that, as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

C.S.H.B. 1228 authorizes a court to order each person who is financially able and whose parental rights have been terminated with respect to a child who was conceived as a direct result of conduct that constitutes an offense of continuous sexual abuse of a young child or children, sexual assault, aggravated sexual assault, or prohibited sexual conduct to support the child in the manner specified by the order.

C.S.H.B. 1228 requires, rather than authorizes, the court to order the termination of the parent-child relationship of a parent and a child on a finding relating to certain sexual offenses. The bill specifies that such a finding must be by clear and convincing evidence and that the court, in addition to other findings, must find that the parent has engaged in conduct that constitutes an offense of continuous sexual abuse of a young child or children, sexual assault, aggravated sexual assault, or prohibited sexual conduct, rather than finding that the parent has been

convicted of such an offense, and that the conduct resulted in the victim of the conduct becoming pregnant with the parent's child. The bill authorizes the court to order the termination of the parent-child relationship of the parent and the child if, for the two years after the birth of the child, the parent was married to or cohabiting with the other parent of the child and if the court finds that the parent has been convicted of an offense of continuous sexual abuse of a young child or children, sexual assault, aggravated sexual assault, or prohibited sexual conduct; that the other parent became pregnant with the child as a direct result of the commission of the offense by the parent; and that termination is in the best interest of the child.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1228 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Section 153.004, Family Code, is amended.

SECTION 2. Section 153.004, Family Code, is amended.

SECTION 3. Section 154.001(a-1), Family Code, is amended.

SECTION 4. Section 161.007, Family Code, is amended to read as follows:

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT. The court shall ~~[may]~~ order the termination of the parent-child relationship of a parent and a child if the court finds by clear and convincing evidence that:

(1) the parent has engaged in conduct that constitutes ~~[been convicted of]~~ an offense ~~[committed]~~ under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the conduct described by Subdivision (1) ~~[commission of the offense by the parent]~~, the victim of the conduct ~~[offense]~~ became pregnant with the parent's child; and

(3) termination is in the best interest of the child.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Section 161.007, Family Code, is amended to read as follows:

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT. (a) Except as provided by Subsection (b), the ~~[The]~~ court shall ~~[may]~~ order the termination of the parent-child relationship of a parent and a child if the court finds by clear and convincing evidence that:

(1) the parent has engaged in conduct that constitutes ~~[been convicted of]~~ an offense ~~[committed]~~ under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;

(2) as a direct result of the conduct described by Subdivision (1) ~~[commission of the offense by the parent]~~, the victim of the conduct ~~[offense]~~ became pregnant with the parent's child; and

(3) termination is in the best interest of the child.

(b) If, for the two years after the birth of the child, the parent was married to or cohabiting with the other parent of the child, the court may order the termination of the

parent-child relationship of the parent and the child if the court finds that:

- (1) the parent has been convicted of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;
- (2) as a direct result of the commission of the offense by the parent, the other parent became pregnant with the child; and
- (3) termination is in the best interest of the child.

SECTION 5. The changes in law made by this Act apply only to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after that date. A suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 5. Same as introduced version.

SECTION 6. The enactment of this Act constitutes a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for the possession of or access to a child rendered before the effective date of this Act.

SECTION 6. Same as introduced version.

SECTION 7. This Act takes effect September 1, 2013.

SECTION 7. Same as introduced version.