

SUBJECT: Paternity registry and adoption procedures

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 9 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, Naishtat, A. Reyna, Smith, Williams

0 nays

WITNESSES: For — Nancy Engman Holman, Texans Care for Children; Winifred Conlon, Capitol Area Foster Parent Association; Dorotha Tilley; Heidi Bruegel Cox; Rita Powell; Melinda Wheatley

Against — David Shelton, Texas Fathers Alliance

On — Richard Bays, Texas Department of Health, Bureau of Vital Statistics; Howard Baldwin, Texas Department of Protective and Regulatory Services; Frances Phillips

BACKGROUND
:

The Governor's Committee to Promote Adoption was created in May 1996 to identify ways to reduce legal, judicial and administrative barriers to adoption. The committee recommended that the Legislature establish a “putative father's registry” as exists in other states. Such registries require positive action of the part of a father to establish his parental rights — if he is not wed to the mother, providing financial or emotional support, and does not register within 30 days after the child's birth, he loses all parental rights to the child.

During the interim, the Juvenile Justice and Family Issues Committee was charged with studying adoption practices. The committee recommended that the Family Code provide for involuntary termination of a father's parental rights if the father was convicted of a criminal act that resulted in the pregnancy (rape or incest); that a home study be completed prior to a child's placement in a home, except for intra-family adoptions; that the voluntary adoption registry be transferred from the Department of Protective and Regulatory Services to the Bureau of Vital Statistics; and that all “Baby Wanted” type advertising related to adoptions be prohibited, except for the ads of licensed child placement agencies.

DIGEST: CSHB 1091 would amend Family Code chapters dealing with termination of the parent-child relationship and adoption.

Paternity registry. The Bureau of Vital Statistics would be required to establish and administer a paternity registry to: (1) protect the parental rights of fathers who affirmatively assumed responsibility for children they might have fathered, and (2) expedite adoptions of children whose biological fathers were unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.

The registry would not relieve a mother of the obligation to identify the known father of her child. A man would not be required to register if he was presumed to be the biological father of a child under provisions of the Family Code or had been adjudicated to be the biological father of a child by a court of competent jurisdiction.

Men could register by filing a signed and notarized “notice of intent to claim paternity” on a form provided by the Bureau of Vital Statistics. The bureau would have to make forms available at all hospitals and birthing places, licensed child-placing agencies, county and district clerks, municipal clerks, justices of the peace, jails, prisons, and facilities of the Texas Department of Criminal Justice and Texas Youth Commission.

A notice of intent to claim paternity could be filed before the birth of the child but not after the 30th day after the child's birth. A man who failed to file a notice of intent to claim paternity within 30 days after the child's birth could not assert an interest in the child other than by filing a suit to establish paternity.

Ignorance of a pregnancy would not be a sufficient reason for failing to register to claim paternity. A man who had sexual intercourse with a woman would be deemed to know that it could result in pregnancy.

The registry would have to send a copy of the notice of intent to claim paternity to the mother, who would have 30 days to deny the registrant's claim of paternity on a form provided by the bureau and signed and acknowledged before a notary public. If the mother denied the registrant was the father of her child, the bureau would have to immediately notify the

registrant of the denial and of his right to file a legal action to establish paternity.

If the bureau received court notice of a decree terminating the registrant's parent-child relationship, it could not enter into the registry the notice of intent to claim paternity.

A man could revoke the notice of intent to claim paternity at any time by sending the registry a written statement signed and acknowledged before a notary public. The statement would have to include a declaration that, to the best of the registrant's knowledge and belief, the registrant was not the father of the named child or a court had adjudicated paternity and determined someone else was the child's father.

If a court determined that a registrant was not the father of the child, the bureau would have to remove his name.

No fee could be charged for filing with the registry a notice of intent to claim paternity of a child or for a denial of a registrant's paternity. The Texas Department of Health could charge a fee for processing a search of the paternity registry and for providing a requested certificate of the search results. The Department of Protective and Regulatory Services or the state child support enforcement agency would be exempt from fee requirements.

Information contained in the registry would be confidential and could be released only for limited legitimate reasons, including a court or administrative proceeding. The registry would have to furnish information by electronic data exchange to the state's child support enforcement agency and the Department of Protective and Regulatory Services. A person would commit a Class B misdemeanor, punishable by up to 180 days in jail and a \$2,000 fine, for intentionally and unlawfully releasing or using information from the registry.

Termination and voluntary relinquishment of parental rights. The rights of an alleged biological father could be terminated if he had not registered with the paternity registry and, after the exercise of due diligence, his identity and location were unknown.

A court also could order termination of the parent-child relationship if it found that the biological father had been convicted of sexual assault, aggravated assault or prohibited sexual conduct related to incest that directly resulted in the victim's pregnancy with the father's child, and that it would be in the child's best interest to terminate the relationship.

An affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child would be irrevocable if it designated the Department of Protective and Regulatory Services (DPRS) or a licensed child-placing agency to serve as the managing conservator. Any other affidavit of relinquishment or waiver that failed to state it was irrevocable could be revoked within 10 days of the date of execution.

To revoke a relinquishment or waiver, the parent would have to sign a statement witnessed by two credible persons and verified before a person authorized to take oaths. A copy of the revocation would have to be delivered to the person designated in the affidavit.

When an affidavit of relinquishment of parental rights was executed, the mother of a newborn child could authorize release of the child from the hospital or birthing center to a licensed child-placing agency, the DPRS, or another designated person. The release would have to be executed in writing, witnessed by two credible adults, and verified before a person authorized to take oaths. The hospital or birthing center would have to comply with the terms of a properly executed release without requiring a court order.

Adoption procedures. Any party requesting an adoption would have to undergo a court-ordered adoptive home screening before a child could be placed in their home, unless the child was being adopted by certain family members. The screening would have to comply with the rules adopted by the Board of Protective and Regulatory Services providing minimum requirements. The applicant would have to pay the costs of the home study.

CSHB 1091 would allow adoption in two new circumstances involving children at least two years old whose relationship with one parent had been terminated. Such children could be adopted if: (1) the person seeking the adoption had been a managing conservator or had actual care, possession

and control of the child for a period of six months preceding the adoption, and the nonterminated parent consented to the adoption, or (2) if the person seeking the adoption had been a managing conservator or had actual care, possession and control of the child for a period of one year preceding the adoption.

A court would have to give precedence to a final adoption hearing over all other civil cases not given preference by other law, if the social study had been filed and the criminal history for the person seeking to adopt the child was obtained.

Adoption registry. The Bureau of Vital Statistics, rather than the DPRS, would be required to maintain a mutual consent voluntary adoption registry, known as the “central registry,” through which adoptees, birth parents, and biological siblings could voluntarily locate each other. At the time an adoption order was rendered, the court would have to provide information from the bureau about the voluntary adoption registry to the parents of the adopted child or to the child, if the child was 14 years or older. A licensed child-placing agency would have to provide the same information to each of the child's biological parents known to the agency. The information would have to include the right of the child or biological parent to refuse to participate in the registry.

An agency authorized to provide a voluntary adoption registry or participating in a registry with other agencies would have to send a duplicate of all information it maintained in or provided to the central registry maintained by the Bureau of Vital Statistics.

The Texas Board of Health would be authorized to make rules for the administration of the central adoption registry by the bureau.

Confidential intermediaries. On an application by an adoptee, adoptive parent, biological parent or biological sibling, the court that rendered an adoption order could appoint a confidential intermediary to assist in locating an adoptee, adoptive parent, biological parent or biological sibling. A confidential intermediary could not be appointed to locate a person younger than 18 years old. Courts could open adoption records to confidential intermediaries. Licensed child-placing agencies, voluntary adoption

registries, private attorneys, and the bureau of vital statistics would be required to open records, including names, addresses and social security numbers of the parties to an adoption to a confidential intermediary.

To be eligible for appointment as a confidential intermediary, a person would have to be at least 21 years old; have a bachelor's degree in a social or behavioral science from an accredited institution of higher learning or a high school diploma, or the equivalent, and not less than six years of social services work experience; and not have been convicted of a felony or certain misdemeanors.

Information obtained by a confidential intermediary would be confidential and could be used only to arrange for communication between the person who requested the assistance and a person sought.

Each party would have to agree to communicate directly, and the intermediary would have to notify the court of such agreement prior to any communication. If both persons did not consent, all records and any information obtained by the confidential intermediary during the course of investigation would be returned to the court and remain confidential.

A confidential intermediary who knowingly violated the confidentiality or mutual consent requirements commit a Class A misdemeanor, punishable by a maximum penalty of one year in jail and a \$4,000 fine.

The person who applied for appointment of the confidential intermediary would be required to pay the costs for the services.

Prohibited adoption advertising. Persons would commit a Class A misdemeanor by advertising in public media that they would place a child for adoption, provide a child for adoption, or obtain a child for adoption. Subsequent offenses would be a third degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000. "Public media" would include communications though the use of the Internet or another public computer network. Ads of licensed child-placing agencies would be exempt from this prohibition.

Effective date. CSHB 1091 would take effect September 1, 1997, and would apply only to actions taken on or after that date

Administration of the central voluntary adoption registry would be transferred from DPRS to the Bureau of Vital Statistics effective January 1, 1998. DPRS and the bureau would be required to develop and implement a transfer plan before that date.

SUPPORTERS
SAY:

The paternity registry created by CSHB 1091 would protect the parental rights of those biological fathers who affirmatively assume responsibility for children they may have fathered. Those fathers would be entitled to service of process in original suits affecting the parent-child relationship. This would be a more effective form of notice than notice by publication, requiring the birth mother to identify the father, or requiring adoptive parents to locate the father. In addition, a court could not terminate the parental rights of an alleged or probable father who had not been personally served or signed an affidavit of relinquishment or waiver of interest unless the Bureau of Vital Statistics certified that a diligent search of the paternity registry did not produce a filing or registration pertaining to the child in question. Paternity registries are being used successfully in several other states.

The paternity registry would also provide assurance to the adoptive parents and the birth mother that an adoption would not be disrupted. In order to maintain an interest in the child, the biological father would have to file a notice of intent to claim paternity within 30 days after the child was born or file a suit to establish paternity before the termination of his parental rights.

The bill would streamline the adoption process and help move children more quickly from foster care into permanent stable homes by limiting the period during which certain affidavits of relinquishment or waivers of interest could be revoked; by allowing adoptions of children at least two years old when the parental rights of one parent have been terminated and a foster parent had had substantial custody of the child; and by requiring courts to give precedence to final adoption hearings.

The bill would facilitate appropriate termination of parental rights in cases where the parent caused the pregnancy during commission of certain sexual offenses.

CSHB 1091 would help adoptees, birth parents and biological siblings find each other when mutually agreeable by requiring dissemination of information about the central adoption registry, requiring other Texas adoption registries to submit their information to the central registry, and providing for the appointment of confidential intermediaries.

**OPPONENTS
SAY:**

In many cases, a pregnancy may result from a short-term relationship where a man would not have a reasonable opportunity to get information required by the paternity registry, such as the mother's social security number or driver's license number. In many cases, a woman may even use a false name. It is unfair to put the responsibility solely on the father in such cases to track down personal information about the mother and register with it or lose rights to a child in an expedited manner. The benefit of the registry for fathers who do register would be far outweighed by the harm it would cause to other fathers whose rights would be prematurely terminated.

Mailing a copy of a notice of intent to claim paternity to a mother could threaten her right to confidentiality and privacy. A mailed notice could easily be intercepted or misdirected.

NOTES:

The committee substitute stipulated that DPRS and the child support enforcement agency would not have to pay fees for information from the paternity registry; that private attorneys would have to provide information to confidential intermediaries; and that registrants to the paternity registry would be served in a suit affecting the parent-child relationship and would be subject to the personal jurisdiction of Texas courts.