

SUBJECT: Possession of abandoned babies by EMS providers

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 9 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt
0 nays

WITNESSES: For — Deborah Richardson, John M. Richardson, M.D.
Against — None
On — Charles Childress, Texas Department of Protective and Regulatory Services

BACKGROUND: Current law does not authorize emergency medical services (EMS) personnel to take possession of babies who are abandoned by their parents. Paramedics and emergency medical technicians hold EMS licenses and certifications under Health and Safety Code, chapter 773. Many firefighters and emergency-room nurses also hold these licenses and certifications, but most emergency-room physicians do not.

Family Code, sec. 262.004 allows a law enforcement officer or a juvenile probation officer to take possession of a child without a court order if the child is delivered voluntarily by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child. Sec. 161.001 allows a court to order termination of the parent-child relationship for numerous reasons, including that the parent voluntarily left the child alone or in the possession of someone other than a parent and expressed an intent not to return.

Penal Code, sec. 22.041 makes it an offense to abandon a child in any place under circumstances that expose the child to an unreasonable risk of harm. This offense is a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000, if a person abandons a child without intent to return for the child.

DIGEST: CSHB 3423 would add subchapter D to Family Code, chapter 262 to require an EMS provider licensed under Health and Safety Code, chapter 773 to take possession of a child younger than 30 days old if the child was delivered voluntarily by the child's parent and the parent did not express an intent to return for the child. The EMS provider would not need a court order to take possession of the child. The provider would have to perform any act necessary to protect the child's physical health or safety.

By the close of the next business day after taking possession of the child, the EMS provider would have to notify the Department of Protective and Regulatory Services (DPRS), which would have to assume the care, control, and custody of the child immediately upon receipt of the notice. The department would have to file a suit affecting the parent-child relationship, ask the court to appoint an attorney to protect the child's interests, and request an initial hearing to be held by the first business day after the child was taken into possession, as required by Family Code, sec. 262.105.

Under CSHB 3423, voluntary delivery of a child to an EMS provider would be an affirmative defense to prosecution for abandonment of a child. The bill also would add the act of delivering a child voluntarily to an EMS provider without expressing an intent to return for the child to the list of reasons for terminating the parent-child relationship.

This bill would take effect September 1, 1999.

SUPPORTERS SAY: There have been many recent horror stories of newborns being abandoned by their parents in garbage dumps, bathrooms, parking lots, and ditches. CSHB 3423 would offer an inventive way to combat this problem and would provide an alternative for new parents who are overwhelmed by the immediate responsibilities of caring for a baby. The parents could turn their babies over to qualified medical personnel with complete anonymity and freedom from prosecution. This might encourage more parents to deliver their newborns to an emergency room or a firehouse rather than abandon the babies to die.

Mothers who abandon their babies often hide their pregnancy and do not receive any prenatal care. These babies are born with serious health problems that must be treated immediately. EMS providers are uniquely suited to accept these seriously ill newborns. EMS providers already have to treat any child who suffers from a life-threatening illness or injury, so CSHB 3423

would not put additional burdens on them.

The bill would clarify the rights of EMS providers to take possession of abandoned babies. While more babies might be left in emergency rooms, firehouses, or ambulances, the EMS community would accept this responsibility gladly if fewer children were abandoned and left to die.

CSHB 3423 is intended to address the specific problem of abandoned newborns, so its application would be limited to children under 30 days old. While abandonment of older children is an important problem, this bill is not intended to address that issue. If it applied to older children, parents might be more likely to abuse the law in custody disputes.

The bill would allow only a parent to turn the child over to an EMS provider. This would protect parental rights. If one parent turned over the child without the consent of the other parent, the unconsenting parent could appear at the hearing requested by DPRS and argue for custody of the child. Other people, including relatives, who take ill or mistreated babies to emergency rooms are protected by existing law.

Other sections of the Family Code contain the language that “the parent did not express an intent to return for the child.” While this language might appear vague, it has not caused interpretation problems in the past. It is unlikely that EMS providers would take possession of a child accidentally or without parental consent. EMS providers already may contact Child Protective Services or the police department if it is necessary to take possession of a child against a parent’s wishes.

OPPONENTS
SAY:

CSHB 3423 would do little to remedy the problem of abandoned newborns. Any parent who could leave a baby in a garbage dump is unlikely to go to the trouble of finding an emergency room or firehouse. Most people who might be affected would not even know that the law had changed.

OTHER
OPPONENTS
SAY:

CSHB 3423 should apply to older children. A child six months old is just as defenseless as a newborn.

The bill in its current form is too vague regarding the parent’s consent. This could lead to accidental possession of the child or taking the child against the parent’s wishes.

The bill should make funds available for EMS providers to compensate them for the additional cost of treating and caring for abandoned children until DPRS assumes custody.

NOTES:

The original bill would have applied to children six months old or younger and to a managing conservator, possessory conservator, guardian, caretaker, or custodian presently entitled to possession of the child. The committee substitute altered the organization of the original bill by combining most of the changes to current law into a new subchapter of the Family Code.