

- SUBJECT:** Expanding the “safe haven” law for abandoned infants
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 7 ayes — Goodman, A. Reyna, King, Menendez, Morrison, Naishtat, Nixon  
0 nays  
2 absent — E. Reyna, Tillery
- WITNESSES:** For — Jeff Heckler, DePelchin Children’s Center of Houston; Donna Martz  
Against — None  
On — Sarah Webster, Texas Department of Protective and Regulatory Services
- BACKGROUND:** With the enactment of HB 3423 by Morrison, the 76th Legislature created a “safe haven” provision under which parents could abandon an infant to an emergency medical services (EMS) provider without penalty. EMS providers include emergency medical technicians (EMTs), paramedics and other personnel who provide emergency medical care in the field rather than a hospital setting. Subchapter D of Family Code, ch. 262 directs EMS to:
- ! accept possession of an infant who appears to be under 30 days old if a parent delivers the child and does not expresses an intent to return;
  - ! notify the Texas Department of Protective and Regulatory Services (DPRS) that the child was abandoned no later than the first working day after the child was taken into possession.
- DPRS then must file a suit affecting the parent-child relationship, request a hearing to appoint an attorney ad litem for the child, and request an initial hearing to be held no later than the first working day after the child was taken into possession.
- Penal Code, sec. 22.041, provides an affirmative defense to prosecution for child abandonment to any person who delivers an infant to an EMS provider

under the safe haven provision in the Family Code. Normally, the penalty for abandonment of a child ranges from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), depending on intent and circumstances surrounding the abandonment.

In all cases where a child is taken away from a parent, DPRS is required, within one working day, to provide written notice to the parents of why the child has been taken away, who can be contacted, and information about parental rights. If DPRS is appointed temporary managing conservator, the agency is required to develop a permanency plan under Family Code, sec. 263.3025. A permanency plan is an evaluation of the child's needs and possible long-term placement options.

DIGEST:

CSHB 706 would amend sections of the Family Code and the Penal Code to:

- ! expand the definition of a safe haven and the terms under which a child may be accepted at one;
- ! change the notification requirements for officials involved after the abandonment of a child at a safe haven; and
- ! define certain parental rights in cases when a child was abandoned at a safe haven.

**Defining a safe haven.** CSHB 706 would amend the Family Code to define a "designated emergency infant care provider" as an EMS provider, a hospital, or a child-placing agency licensed by DPRS that has agreed to act in this capacity and has a licensed, registered nurse on staff who could examine the child. A designated emergency infant care provider would be required to post notice of that designation in a conspicuous place.

This bill would change from 30-days old to 60-days old the apparent age of a child an official could accept in a safe haven. Unless the safe haven official suspected abuse or neglect of the child, the parent could not be prevented from leaving and could remain anonymous. The safe haven official would be protected from civil or criminal liability for injury to the child except in cases of gross negligence by the official. The bill also would direct DPRS to provide reimbursement to an emergency infant care provider for care of an abandoned child.

Penal Code, sec. 22.041(h) would be amended to exempt persons who voluntarily delivered a child to a designated emergency infant care provider from prosecution for child abandonment. Changes to the Penal Code would apply to acts committed on or after the September 1, 2001.

**Changing notification requirements.** CSHB 706 would amend the Family Code to require that DPRS file a suit to terminate the parent-child relationship within 45 days after assuming custody of the child. This would be in addition to DPRS's requesting a hearing to appoint an attorney for the child and requesting an initial hearing to be held no later than the first working day after the child was taken into possession. At the initial hearing, the court would be authorized to waive the requirement that DPRS post written notice to parents if the child were surrendered at a safe haven.

DPRS also would be required to notify local law enforcement of a potential missing child when a child was abandoned at a safe haven.

**Defining certain parental rights.** CSHB 706 would allow a court to order termination of the parent-child relationship if the parent had delivered the child to a designated emergency infant care provider. The bill would add sec. 263.405 to the Family Code to create a rebuttable presumption that the parent consented to termination of the parent-child relationship by abandoning the child at a safe haven. However, if a person claimed to be the parent before the court ordered a final determination, the court would be required to perform a genetic test to determine parentage, if needed, and postpone final determination up to 60 days until parentage could be established.

The bill also would allow DPRS not to search for the parents of an abandoned child or to give preference to relatives of the parents in the permanency planning process if the parents were unknown.

CSHB 706 would take effect September 1, 2001.

SUPPORTERS  
SAY:

CSHB 706 would make the "safe haven" law work the way it was intended by expanding the definition of a safe haven, changing notification requirements, and defining certain parental rights. Since Texas adopted the safe haven law last session, 18 states have passed similar legislation and 20

newborns across the nation have been saved. Texas should continue to lead the nation in addressing this serious problem.

**Defining a safe haven.** Expanding the definition of safe haven to include a hospital and a child-placing agency would make safe havens more accessible to those who need them. Since the law was adopted, only four women have taken advantage of a safe haven, and parents continue to abandon their newborns in parking lots, trash cans, and other dangerous places. The legislation enacted last session confined the definition of safe haven to EMS providers, a designation that may not mean anything to a frightened new parent. Also, because the legislation did not provide money for outreach or advertising, many parents remained unaware of the law.

New parents who are frightened may not associate a fire station with trauma and may not know other ways to contact an EMS provider. Including a hospital in the definition would allow new parents in this traumatic situation go to the place they associate with trauma.

Including a child-placing agency licensed by DPRS that had agreed to act in this capacity and had a licensed, registered nurse on staff to examine the child would address the outreach and advertising problem. These agencies often are established providers of community services, including family planning and adoption services, and they usually are located in urban areas. Because these agencies provide a continuum of services, they may have contact with parents at-risk for abandoning children while other organizations, such as the local fire station, may not. Further, private child-placing agencies have advertising and outreach budgets and would promote the safe haven law.

CSHB 706 would prevent children from being left with unqualified individuals. Mothers who abandon their babies often have hidden their pregnancy and did not receive prenatal care. When their babies are born with serious health problems, they must be treated immediately. It also is possible that a mother could abandon her baby to prevent prosecution for abuse or neglect. Medical personnel can treat life-threatening illnesses or injuries as well as identify neglect or abuse. While EMS and hospitals have medical personnel, a child-placing agency that wishes to act in this capacity would be

required to have a licensed, registered nurse on staff who would examine the child.

The bill also would expand the apparent age that a child could be abandoned under the safe haven law. While the safe haven law is intended to address the specific problem of abandoned newborns, children who are less than 30 days old but large for their age may appear older. Raising the age limit to 60 days would ensure that all newborns are included.

Parents should be guaranteed anonymity. The safe haven law is designed to save the lives of abandoned infants. It is better to have an infant dropped off alive but with no identification, than left in a trash can because the parent did not want anyone to know of the birth.

**Changing notification requirements.** CSHB 706 would ensure that missing children are not assumed to be abandoned. This bill would require DPRS to notify local law enforcement when a child is abandoned, which would allow the infant to be matched up with a non-consenting parent or other relative if that person filed a missing person report with the police.

**Defining certain parental rights.** CSHB 706 would protect parental rights. If one parent turned over the child without the consent of the other parent, the non-consenting parent could appear at the hearing requested by DPRS and argue for custody of the child. The court would be required to establish parentage through a genetic test.

**Liability immunity.** Designated emergency infant care providers should be immune from civil or criminal liability except in cases of gross negligence by the provider. If care providers are overly concerned about being sued, they may not be willing to accept an infant. Like the "Good Samaritan" law, this would help protect people with good intentions from unsubstantiated lawsuits or prosecution, while still leaving them properly liable for gross negligence.

OPPONENTS  
SAY:

CSHB 707 should not guarantee anonymity to parents who abandon newborn babies. Parents should be given privacy, but not anonymity, because it would prevent any future contact between the biological parent and child. Parents should be encouraged to provide basic information under guarantees

of complete privacy under the same terms the state has established for adoption.

The provision that designated emergency infant care providers would be immune from civil or criminal liability except in cases of gross negligence by the provider is too broad. The health and well being of infants should be protected in all cases, not just gross negligence.

OTHER  
OPPONENTS  
SAY:

CSHB 706 should not legislate the terms under which child-placing agencies could act as a safe haven. The requirement of a nurse on staff to examine the child could prevent community centers from participating because they might employ only social workers who have a relationship with the at-risk parents. Most reasonable adults, and particularly those trained in social work, know to call 911 if a baby is delivered on their doorstep. The terms under which child-placing agencies could act as a safe haven should be left up to DPRS, which could better set requirements appropriate to the network of child-placing agencies.

CSHB 707 should apply to older children. A child six-months old is just as defenseless as a newborn.

NOTES:

The committee substitute to HB 707 changed the bill as filed in the following ways:

- ! defined a “designated emergency infant care provider” to include EMS, a hospital, or a child-placing agency licensed by DPRS that has agreed to act in this capacity and has a licensed, registered nurse on staff who will examine the child;
- ! increased the apparent age of an infant under the safe haven law from 30 days to 60 days;
- ! prohibited a safe haven official from impeding the parent except in cases of abuse or neglect;
- ! gave immunity from prosecution for the safe haven official when an abandoned child was injured except in cases of gross negligence;
- ! required a designated emergency infant care provider to post notice of that designation in a conspicuous place; and
- ! required DPRS to reimburse expenses incurred by a safe haven.

CSHB 706 is a combination of two bills: HB 706 by Morrison and HB 1334 by Coleman. HB 1334 has been referred to the House Committee on Juvenile Justice & Family Issues. The companion to HB 1334, SB 783 by Truan, passed the Senate on March 19 by 28-1(Harris) and was referred to the House Juvenile Justice & Family Issues Committee on March 21.