

BILL ANALYSIS

C.S.H.B. 4255
By: Hilderbran
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2008, over 400 children were removed from a polygamist compound in Eldorado, Texas, because of sexual abuse allegations. The Texas Supreme Court later determined that Child Protective Services did not make every reasonable effort to keep each child in the child's home by removing an alleged perpetrator of the abuse instead of the child. Courts should consider the actions of all adults in a household before determining whether the child or the alleged abuser should be removed from the home.

C.S.H.B. 4255 requires a court to issue an order to remove an alleged perpetrator from a home if all available facts indicate that the remaining parent or guardian is likely to abide by the terms of the temporary restraining order preventing interaction between the alleged perpetrator and the child.

C.S.H.B. 4255 enhances the penalty from a Class B misdemeanor offense to a Class A misdemeanor offense for a subsequent conviction for failure to report child abuse or neglect. The bill makes it a Class A misdemeanor offense for a first conviction and a state jail felony offense for a subsequent conviction for failure by certain professionals, such as medical professionals or teachers, to report child abuse or neglect.

C.S.H.B. 4255 makes it a Class A misdemeanor offense for a physician, midwife, or person acting as a midwife in attendance at a birth to fail to file a birth certificate or report a birth as required under law.

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. 4255 reenacts and amends Article 12.01, Code of Criminal Procedure, as amended by Chapters 285 (H.B. 716), 593 (H.B. 8), 640 (H.B. 887), and 841 (H.B. 959), Acts of the 80th Legislature, Regular Session, 2007, to include bigamy among the felonies for which an indictment may be presented within seven years from the date of the commission of the offense unless the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed in which case an indictment may be presented within 10 years from the 18th birthday of the victim of the offense. The bill removes from the felonies for which an indictment may be presented within ten years from the 18th birthday of the victim of the offense the offenses of indecency with a child, sexual assault of a child, or aggravated sexual assault of a child to make those offenses subject to indictment with no time limitation.

C.S.H.B. 4255 amends the Education Code to include among the powers and duties of a peace officer serving as a school attendance officer and a school attendance officer employed by a school district who is not a commissioned peace officer, making a home visit or otherwise contacting the parent of a student who is the subject of an ongoing investigation of child abuse or neglect and who is in violation of compulsory school attendance requirements, except that the peace officer or attendance officer may not enter a residence without the effective consent of the student required to attend school or the permission of the parent of the student or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent or to execute a search warrant or to accompany a peace officer executing a warrant, as applicable. The bill clarifies that the term "effective consent" does not include consent given by a person who by reason of youth is known by the person to whom consent is given to be unable to make a reasonable decision.

C.S.H.B. 4255 changes the warning notice, the issuance of which determines in combination with other factors if a parent commits the offense of contributing to nonattendance, from the general notice of school attendance policy required to be delivered to each student's parent at the beginning of the school year to the notice required to be delivered if a student has a certain number of unexcused absences within a four week period. The bill increases the penalty for a conviction of such an offense from a Class C misdemeanor to a Class A misdemeanor and enhances the penalty for a subsequent conviction to a third degree felony. The bill specifies the punishment for contempt of court for a parent who refuses to obey a court order entered in a case relating to the parent contributing to a student's nonattendance is a fine of not more than \$1,000, confinement in the county jail for not more than six months, or both a fine and confinement in jail. The bill increases the penalty for the offense of failing to attend school from a Class C misdemeanor to a Class B misdemeanor.

C.S.H.B. 4255 amends the Family Code to enhance the penalty from a Class B misdemeanor to a Class A misdemeanor for a subsequent conviction of a failure to report the abuse or neglect of a child. The bill makes it a Class A misdemeanor offense for an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children, to fail to report the abuse or neglect of a child. The bill enhances the penalty from a Class A misdemeanor to a state jail felony for a subsequent conviction of a failure to report the abuse or neglect of a child by such an individual.

C.S.H.B. 4255 clarifies that, in making a determination regarding a child's health and safety and preventing or eliminating the need to remove the child from the child's home or to make it possible to return the child to the child's home, the court may find that based on the circumstances no reasonable efforts would prevent or eliminate that need and that the Department of Family and Protective Services (DFPS) satisfied its requirement to make reasonable efforts to do so even though DFPS made no such efforts.

C.S.H.B. 4255 expands the conditions under which a court may issue a temporary restraining order in a suit by DFPS for the removal of an alleged perpetrator of abuse from the child's home to include the fact that the parent or other adult with whom the child will continue to reside in the child's home is likely to make a reasonable effort to monitor the residence and report to DFPS and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence.

C.S.H.B. 4255 requires, rather than authorizes, the court, in determining whether an immediate danger to the physical health or safety of a child exists such that continuation in the home would be contrary to the child's welfare and there is no time for a full adversary hearing, to consider whether the child's household includes a person who has a conviction for abuse or neglect of another child causing serious injury to or the death of the other child or sexual abuse of another child. The bill prohibits DFPS from allowing an adult entitled to possession of the child to accompany or remain with a child after the child is in DFPS custody, if DFPS takes possession

of the child to protect the health and safety of the child by removing the child from that adult.

C.S.H.B. 4255 amends the Health and Safety Code to make it a Class A misdemeanor offense for failure by a physician, midwife, or person acting as a midwife in attendance at a birth to file a birth certificate or report a birth as required under law.

C.S.H.B. 4255 revises Penal Code provisions on the offense of bigamy. The bill makes it a felony of the second degree for the offense of bigamy if it is shown at trial that at the time of the commission of the offense the person whom an actor marries or purports to marry or with whom the actor lives under the appearance of being married is 17 years of age or younger and the actor is 17 years of age or younger or a felony of the first degree if the actor is 18 years of age or older. The bill makes bigamy a third degree felony except as provided above.

C.S.H.B. 4255 makes the provisions relating to the powers and duties of a peace officer serving as a school attendance officer and a school attendance officer employed by a school district who is not a commissioned peace officer applicable beginning with the 2009-2010 school year. The bill specifies that to the extent of any conflict, the bill's provisions prevail over any other act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4255 adds provisions not included in the original relating to the time limitation for the presentation of felony indictments for the offense of bigamy. The substitute adds provisions not included in the original relating to the powers and duties of a peace officer serving as a school attendance officer and a school attendance officer employed by a school district. The substitute adds a provision not included in the original clarifying the meaning of "effective consent."

C.S.H.B. 4255 adds provisions not included in the original relating to the offense of contributing to nonattendance by a parent. The substitute adds provisions not included in the original relating to the classification of a misdemeanor offense of failure to attend school. The substitute adds provisions not included in the original prohibiting DFPS from allowing an adult entitled to possession of a child who is removed by DFPS from accompanying or remaining with the child. The substitute adds provisions not included in the original revising the felony classification of the offense of bigamy. The substitute adds a provision not included in the original providing for the substitute's provisions to prevail in the case of a conflict between those provisions and an act relating to nonsubstantive additions or corrections enacted by the 81st Legislature, Regular Session, 2009.