

RECEIVED

NOV 26 2007

OPINION COMMITTEE



FILE # ML-45460-07
ID # 45460

OFFICE OF THE GOVERNOR

RICK PERRY November 26, 2007
GOVERNOR

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0649-GA

RE: Attorney General Opinion Request

Dear General Abbott:

A provision of House Bill 568, passed by the 80th Legislature and allowed to become law without the Governor's signature, allows a probate court to declare that the parent of a child under 18 years of age may not inherit from or through his or her child if the parent committed one of a number of crimes against a child who is not the child of that parent.

Section 41(e)(3) of the Probate Code, as now amended by HB 568, holds that a parent may be disinherited if the parent "has been convicted or has been placed on community supervision . . . for being criminally responsible for the death or serious injury of a child" under several sections of the Penal Code. (Emphasis added.) Because Section 41(e)(3) does not qualify the term "child" to limit it to mean only a child born of (or adopted by) a parent subject to this section, it raises the possibility that a person may be disinherited by a court for committing a crime against any child, not just a child related to that person.

The Governor permitted HB 568 to become law without his signature on June 15, 2007; however, the Governor stated at the time that Section 41(e)(3) may pose a constitutional question because it appears to prevent inheritance based on a prior bad act. The constitutional question arises from Article 1, Section 21, of the Texas Constitution, which states in part that "[n]o conviction shall work corruption of blood, or forfeiture of estate . . ." (Emphasis added.)

Therefore, pursuant to Section 402.042 of the Texas Government Code, the Office of the Governor seeks an opinion from your office regarding the following question:

Is Section 41(e)(3) of the Probate Code, as amended by HB 568, in conflict with Article 1, Section 21, of the Texas Constitution?

Thank you for your prompt attention to this matter. Do not hesitate to contact me should you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian C. Newby". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian C. Newby
Chief of Staff
Office of the Governor