

SUBJECT: Law enforcement possession and delivery of children in emergencies

COMMITTEE: Juvenile Justice and Family Issues - committee substitute recommended

VOTE: 7 ayes — Goodman, Brady, De La Garza, Naishtat, Puente, Van de Putte, Williamson

2 absent — Cook, H. Cuellar

SENATE VOTE: On final passage, April 20 - 31-0

WITNESSES: None

DIGEST: CSSB 789 would allow a law enforcement officer to take possession of a child who is classified as a "missing child" and who is the subject of a kidnapping investigation or an investigation involving the interference by a person with a child custody orders. The officer could take the child into possession if the officer believed that a person may flee with or conceal a child who is the subject of the investigation.

The officer would be authorized to take possession of the child and deliver or arrange for the delivery of the child to the person entitled to custody of the child.

If the person entitled to custody of the child was not immediately available to take possession of the child, the law enforcement officer would be required to take the child to the Department of Protective and Regulatory Services (PRS).

Until a person entitled to custody arrived to take the child, PRS could, without a court order, retain possession of the child up to 14 days after the date the child was first brought to the department.

While the child was in the control of PRS, the department could place the child in a foster home. If a custodial parent or other person having custody possession of the child did not take custody of the child before the 15th day after the child had been in the possession of the department, PRS would be

required to proceed under Family Code sec. 262.104, pertaining to taking possession of a child in an emergency without a court order.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 789 stems from a recommendation of the Joint Interim Committee on the Family Code. At present, law enforcement officials have no authority to take a child who is the subject of an investigation of kidnapping or interference with a custody order, even when the officers believe that the child will be taken away or hidden by the offending party. These investigations generally occur when one parent violates the provisions of a custody order and takes the child without the other parent's consent.

The provisions of this bill would provide a mechanism that would allow law enforcement personnel to take possession of a child without court order when such a child is listed as a missing child. This would give law enforcement an important tool to deal with instances where one parent ignores an order of the court granting custody to another parent. Obtaining a court order could waste precious time in which the offending parent could just move with the child to another undisclosed location.

**OPPONENTS
SAY:**

The provisions of this bill could be problematic for law enforcement officers to execute and could raise certain legal questions if they determine that the wrong parent is entitled to possession of the child. The courts are in the best position to determine which person has custody of a child and to provide safeguards to ensure that parents' rights are not violated.

NOTES:

The committee amendment would delete a section relating to conditions under which certain officers could take possession of a child without a court order. The substitute would authorize an officer to deliver a child to "a person entitled to possession of the child," rather than to "a parent or other person entitle to possession of the child," as in the Senate-passed version. The substitute would also establish procedures for delivering a child if a person entitled to possession of the child was not immediately available.