

SUBJECT: Handling of neglected and abused children by DPRS

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 6 ayes — Goodman, Pickett, P. King, Morrison, A. Reyna, Truitt
0 nays
3 absent — Isett, Naishtat, E. Reyna

WITNESSES: None

DIGEST: HB 3838 would make numerous changes in the laws governing Department of Protective and Regulatory Services (DPRS) handling of cases of abused and neglected children.

Abuse or neglect reports. HB 3838 would allow persons making abuse or neglect reports to waive in writing their right to have their identity kept confidential. Confidentiality in reports of abuse or neglect in a school would be limited to the person who made the report. The bill would exempt investigations of child abuse or neglect in licensed child-care facilities from certain confidentiality and disclosure requirements.

The bill would allow courts to order the release of children's medical, psychological, or psychiatric records for an abuse or neglect investigation if a parent did not consent to their release. As part of an investigation of abuse or neglect, courts could order mental health examinations of parents or persons responsible for the care of children.

HB 3838 would require persons, including medical facilities, making statutorily required reports of abuse or neglect to DPRS or another agency to release records that directly related to the suspected abuse or neglect without parental consent or a court order.

The bill would make other changes concerning abuse or neglect reports, including:

- ! adding to the requirements that courts must consider when deciding whether the release of confidential information about abuse and neglect reports would be likely to endanger the life or safety of persons providing care for a child;
- ! requiring state agencies investigating abuse or neglect reports in facilities they operate or license to follow requirements in the Family Code and the Human Resources Code; and
- ! requiring attorney ad litem fees paid for indigent parents who need representation in certain hearings that are part of abuse or neglect investigations to be paid according to general Family Code provisions about ad litem.

Aggravated circumstances to waive family preservation requirements.

HB 3838 would amend current criteria outlining when courts can accelerate trial schedules to result in a final order concerning possession of a child to allow the criteria to be used to waive certain requirements. The criteria, called “aggravated circumstances,” could be used to waive requirements of a family support plan for unification and requirements that reasonable efforts be made to return a child to parents, if the court found that all reasonable efforts had been made to return the child or that the parent had subjected the child to the aggravated circumstances.

HB 3838 would define aggravated circumstances as those that now allow trials to be accelerated and would add criteria to that list, including:

- ! that parents had abandoned the child without identification;
- ! that parents had inflicted serious bodily injury or sexual abuse on the child or had given consent for another to inflict serious bodily injury or sexual abuse;
- ! that parents had left a child alone or with another person for at least six months without expressing intent to return and without providing adequate support; and
- ! that the parent’s rights to another child had been terminated involuntarily because the parent placed or allowed a child to remain in a situation that endangered the child’s well-being or engaged in conduct or placed the child with persons who engaged in conduct that endangered the child’s well-being.

In addition, the bill would add murder, capital murder, and manslaughter to the list of offenses that would be considered aggravated circumstances and would include as an aggravated circumstance committing one of the offenses against another child of the parent.

A hearing to review the child's status would not have to be held if first a court had held an initial permanency hearing under these aggravated circumstance provisions. Judges could waive a family service plan if aggravated circumstances existed.

Hearings and court filings when agency does not possess child. HB 3838 would outline procedures for hearings about a child's welfare when a state agency did not have possession of a child. After the hearing, a court could grant a request to remove the child from the parent or custodian if the court found evidence that efforts had been made to prevent or eliminate the need to remove the child from home and that allowing the child to remain in the home would be contrary to the child's welfare.

If the court ordered the child removed from the home, the court would have to issue a temporary order and inform the parents in open court that their rights and duties could be subject to termination unless they were willing and able to provide a safe environment for the child. If a parent's location was unknown, the court could issue a temporary order without publishing a notice of a citation.

A court would have to issue a protective order if it found that a child required protection from violence by a member of the child's family or household.

HB 3838 would require that an original suit filed after notice and a hearing by a governmental agency requesting to take possession of a child would have to be supported by a sworn affidavit. The affidavit would have to demonstrate that efforts had been made to prevent or eliminate the need to remove the child from home and that allowing the child to remain at home would be contrary to the child's welfare.

Other provisions. HB 3838 would reduce from 14 days to five days the length of time that a child could be in possession of DPRS without a court order. Written notice that DPRS was taking possession of a child could be waived by a court at an initial court hearing for good cause.

The bill would specify that children's health and safety are always the paramount concern when government agencies consider the need to remove children from their homes or returning children to their homes.

Neglect would be grounds for a court to intervene, and courts specifically would not have to give prior notice or a hearing to issue a temporary restraining order or attachment of a child.

HB 3838 would make numerous other changes, including:

- ! authorizing DPRS to retain possession of a child without a court order for up to five days if it had taken possession of the child solely to deliver the child to the parent or custodian and the parent or other person entitled to possess the child had not yet taken the child;
- ! clarifying procedures for courts to transfer suits related to adversary hearings about the possession of children;
- ! requiring a clerk to transfer a case involving a parent-child relationship to another court if a transfer order had been issued under a court exercising emergency procedures in a suit by a governmental agency;
- ! requiring a clerk to transfer a case to another court if the transfer was mandatory and had been ordered by a court hearing a protective services case;
- ! prohibiting DPRS from supervising visitation of children in custody matters unless the department was involved in a suit concerning the child; and
- ! requiring all participants in alternative dispute-resolution procedures to follow certain Family Code and Human Resource Code reporting requirements for abuse.

HB 3838 would repeal DPRS procedures that apply when a parent or guardian voluntarily agrees to surrender custody and care of the child. It also would repeal procedures for handling cases when children are returned to their homes.

HB 3838 would take effect September 1, 1999. It would apply to lawsuits affecting parent-child relationships filed requesting a court order to take possession of a child or to a child taken into possession without a court order on or after that date.

SUPPORTERS
SAY:

HB 3838 would help improve DPRS' handling of cases of abused and neglected children by streamlining and clarifying procedures. Many of the changes in HB 3838 would conform Texas law to federal law.

Abuse or neglect reports. HB 3838 would limit confidentiality in reports of abuse or neglect in a school to the person who made the report, since this is how confidentiality is handled in other reports.

HB 3838 would allow courts to order the release of certain records because they could be important in an investigation to show a pattern of abuse. Similarly, allowing courts to order health examinations of parents or persons responsible for the care of children could be necessary for a full investigation.

HB 3838 would make it clear that the obligation to report abuse and neglect includes authority to release certain records. This is necessary to ensure that, for example, a doctor reporting a bone fracture could show the x-ray to investigators without waiting for a court order or consent from the allegedly abusive parents. HB 3838 would conform with the Medical Practices Act and the Health and Safety Code, which allow medical records to be released to governmental agencies as required by law. These provisions would apply only to records that related directly to a case.

HB 3838 would exempt investigations of child abuse or neglect in licensed child-care facilities from certain confidentiality and disclosure requirements, because these investigations are controlled by federal and state confidentiality provisions in the Human Resources Code.

Aggravated circumstances to waive family preservation requirements.

The definitions of aggravated circumstances in HB 3838 would meet requirements of federal law for standards under which family preservation requirements can be waived. The bill also would set standards for processing cases in which efforts to return the child to the parents were being waived.

Hearings and court filings when agency does possess child. HB 3838 would close a gap in current law by giving DPRS guidelines to follow when the agency did not have possession of a child. Some cases might not be quite serious enough to remove a child from home, but filing a suit could induce parents to take specific action or would put DPRS in a position to move

quickly if necessary. HB 3838 would specify what requirements would have to be met when it is not necessary to remove a child prior to notice and hearing but when family preservation efforts have failed and the child should not remain in the home.

HB 3838 would conform Family Code sections about emergency orders dealing with children with other code provisions that authorize the filing of petitions before a state agency takes a child in cases of neglect.

Other provisions. Reducing from 14 days to five days the length of time that a child could be in possession of DPRS without a court order would help ensure that DPRS did not hold children any longer than necessary. DPRS can handle these situations within five days. In most cases, neither state nor federal foster-care reimbursements are available before the initiation of a suit, so it is important that DPRS move quickly to ensure that counties are not asked to cover unreasonably long care payments.

Allowing written notice of DPRS actions and parents' rights to be waived at an initial court hearing for good cause would give courts discretion to waive these requirements when appropriate. For example, parents may have been given notice earlier in the process. Courts often are given authority to act upon "good cause."

Requiring that children's health and safety are always the paramount concern when a government agency considers the need to remove children from their homes or returning children to their homes would make Texas law comply with federal requirements.

Adding neglect to the grounds that enable a court to intervene would conform to changes made in 1997.

HB 3838 would repeal DPRS requirements that apply when a parent or guardian voluntarily agrees to surrender a child, because DPRS does not handle these voluntary placements. The bill would repeal the procedures for handling cases when children are not in their homes, because the current procedures are inconsistent with other case-handling requirements adopted in 1997 and are no longer necessary.

OPPONENTS
SAY:

Some provisions of HB 3838 could be too broad. For example, giving courts authority to order parents or persons responsible for the care of a child to be examined could raise questions about whether this would violate a person's rights against self-incrimination under the Fifth Amendment to the U.S. Constitution, especially if a criminal investigation occurred later.

Other provisions outlining aggravated circumstances under which courts could waive requirements that reasonable efforts be made to return a child to a parent could be too harsh. For example, HB 3838 would include as an aggravated circumstance involving a mother's rights to one child that her rights to another child had been terminated because she had placed a child with a former boyfriend who engaged in conduct that endangered the child's well-being.