

SUBJECT: Clarifying procedures in DPRS suits

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

VOTE: 6 ayes — Dutton, Goodman, Baxter, Castro, Morrison, Reyna
0 nays
3 absent — Dunnam, Hodge, J. Moreno

SENATE VOTE: On final passage, May 1— 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Family Code, sec. 261.002, requires the Department of Protective and Regulatory Services (DPRS) to establish and maintain in Austin a central registry of reported cases of child abuse or neglect, and sec. 261.004 requires DPRS to prepare and disseminate statistics relating to the abuse and neglect of children and to include the information in an annual report available to the public.

Family Code, ch. 262, establishes procedures in suits by a governmental entity to protect the health and safety of a child. It gives DPRS the right to an expedited hearing in any proceeding in which a hearing is required if DPRS determines that a child should be removed from the child's home because of an immediate danger to the physical health or safety of the child.

Family Code, ch. 263, governs judicial review of the placement of children under the care of DPRS.

Family Code, sec. 264.101, provides that the Board of Protective and Regulatory Services may adopt rules establishing criteria and guidelines for the payment of foster care for a child and for providing care for a child after the child turns 18 if the child regularly is attending high school, an institution of higher education, or a vocational or technical program.

DIGEST: The bill would amend Family Code, sec. 261.002, to require DPRS to establish and maintain in Austin a central registry of reported cases of child abuse, neglect, or exploitation.

The bill would make changes to Family Code, sec. 261.004, and require DPRS to report statistical information to the extent that it was available from DPRS records, including the following:

- the number of initial phone calls received by DPRS alleging abuse or neglect of a child;
- the number of reports received by DPRS alleging abuse or neglect of a child and assigned by DPRS for investigation;
- the number of families in which, after an investigation of a report alleging abuse or neglect of a child, the child was not removed, but the child or family received services from DPRS;
- the number of children who died during the preceding year as a result of child abuse or neglect, and the number who were in DPRS conservatorship at the time of death;
- the number of DPRS workers responsible for report intake and other services, categorized by region;
- the response time by DPRS with respect to initiating an investigation of a report of child abuse or neglect;
- the number of children returned to their families or who received family preservation services and were the victims of child abuse or neglect within a specified timeframe; and
- the number of children for whom DPRS had been appointed temporary or permanent managing conservator.

The bill would make various changes to Family Code, ch. 262, governing the procedures in suits by a governmental entity to protect the health and safety of the child. It would specify that in a suit filed by a governmental entity that requested permission to take possession of a child without prior notice and a hearing, the affidavit sworn to by a person with personal knowledge could be based on knowledge acquired from the DPRS investigation or other business records. Further, the bill would require the court to return the child at the initial hearing unless the court found sufficient evidence to satisfy a person of ordinary prudence and caution:

- that there was a continuing danger to the physical health or safety of the child, or there was evidence that the child had been, and possibly would continue to be, the victim of sexual abuse;
- that continuation of the child in the home would be contrary to the child's welfare; and
- that reasonable efforts had been made to prevent or eliminate the need for removal.

This bill would establish that in any proceeding involving an expedited hearing, DPRS, the parent, guardian, or other party would be entitled to an expedited appeal on a ruling by a court that DPRS had to return the child to the child's home, if DPRS already had removed the child.

SB 1424 would specify procedures for the expedited appeals process. Among other things, it would require the party to file a notice of expedited appeal not later than the first day after the date the trial court made the ruling, and would specify timeframes for the filing of the trial record and briefs with the appellate court.

The bill also would make changes to the process of appealing a final order terminating parental rights. Among other things, it would require the appeal to be set for submission on the first submission date on or after the 31st day after the date when the last brief on the appeal was filed.

Finally, the bill would amend Family Code, sec. 264.101 to allow a child to remain in foster care after the age of 18, subject to the availability of funds, if the child was medically fragile or had complex medical needs.

The bill would take effect on September 1, 2003.

**SUPPORTERS
SAY:**

SB 1424 would clarify and amend Family Code provisions that affect DPRS. It would specify the statistics that DPRS must keep and disseminate regarding its activities to conform to current practices and legal standards. Further, the bill would clarify the process of appealing a final order terminating parental rights. Current statutory language, intended to speed up the process to bring finality to the child, has resulted in confusion.

The bill would bring consistency to the law by imposing the same standard of proof in similar situations involving removal of a child. The court would have to order the return of the child at the initial hearing after DPRS took possession of the child without a court order unless it found sufficient evidence to satisfy a person of ordinary prudence and caution that there was a continuing danger to the physical health or safety of the child, among other things. This is the same standard used elsewhere in the code and would bring consistency to the statute. Finally, the ordinary prudence language has been in place for years and would not be subject to constitutional challenge.

SB 1424 would clarify the procedures and timeframes for DPRS to take an expedited appeal on a ruling by a court that a child could not be removed from the child's home or would have to be returned to the child's home. Because there are no procedures regarding expedited appeals in current law, appellate courts are unsure about how to proceed.

The bill would permit a child to remain in foster care after the age of 18, subject to the availability of funds, if the child was medically fragile or had complex medical needs. Such a child would be better off remaining with the foster family than having his or her life disrupted by placement in a nursing home or other location.

SB 1424 would specify the kind of information upon which a sworn affidavit accompanying a petition to take possession of a child without notice and a hearing would have to be based. Current law requires the affidavit to be sworn to by a person with personal knowledge of the facts justifying removal of the child. This standard can pose a practical problem for DPRS because, due to high caseworker turnover, the caseworker who signed the affidavit might not have been the same one who investigated prior incidents of abuse. The bill would clarify that knowledge acquired from a DPRS investigation or other business records would qualify as personal knowledge under the statute.

**OPPONENTS
SAY:**

It would be inappropriate to permit an affidavit to include knowledge acquired from prior investigations or business records. The personal knowledge requirement helps ensure the reliability of information that permits DPRS to take possession of a child without notice or a hearing. SB 1424 would dilute that requirement, to the detriment of parents accused of abuse or neglect.

NOTES:

A similar bill, HB 1571 by Dutton, was reported favorably by the Juvenile Justice and Family Issues Committee on April 3, but it died in the Calendars Committee. HB 1571 contained many of the same provisions as SB 1424 but also would have repealed sections of the Family Code prohibiting DPRS and other agencies from making adoption and foster care placement decisions on the presumption that placing a child in a family of the same race or ethnicity as the child would be in the child's best interest.