

SUBJECT: Law enforcement to accompany DPRS for serious reports of abuse

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Uresti, Wohlgemuth, Miller, Olivo, Reyna

0 nays

4 absent — Naishtat, Christian, McCall, Villarreal

SENATE VOTE: On final passage, April 25 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Robert J. Kenney

Against — F. Scott McCown, CPPP

BACKGROUND: Family Code, sec. 261.301, provides that the Department of Protective and Regulatory Services (DPRS) or a designated agency, with assistance from the appropriate state or local law enforcement agency, must make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare. An investigation of a report to DPRS of serious physical or sexual abuse of a child must be conducted jointly by an investigator from the appropriate local law enforcement agency and the department or agency responsible for conducting an investigation under Family Code, ch. 26, subch. E, which governs investigations of abuse, neglect, or exploitation in certain facilities.

DPRS may by rule assign priorities and prescribe procedures for investigations based on the severity and immediacy of the alleged harm to the child. Texas Administrative Code, title 40, part 19, ch. 700, subch. E, rule 700.505 specifies that a priority I report concerns a child who appears to face an immediate risk of abuse or neglect that could result in death or serious harm and that DPRS must initiate an investigation within 24 hours of receiving such a report.

Code of Criminal Procedure, sec. 2.27, requires an investigator from the appropriate local law enforcement agency, jointly with DPRS or with the

agency responsible for conducting an investigation, to investigate a report alleging serious physical or sexual abuse of a child by a person responsible for the care, custody, or welfare of the child.

DIGEST:

SB 669 would amend Family Code, sec. 261.301 to specify that an investigation of a priority I report, or a report that alleged serious physical or sexual abuse of a child, would have to be conducted jointly by a peace officer from the appropriate local law enforcement agency and DPRS, or the agency responsible for conducting the investigation under Family Code, ch. 26, subch. E.

It would require that DPRS and the appropriate local law enforcement agency conduct an investigation, other than one under subchapter E, as provided by this section and Code of Criminal Procedure, sec. 2.27, of any priority I report or any report that alleged serious physical or sexual abuse of a child. Immediately on receipt of such a report, DPRS would have to notify the appropriate local law enforcement agency.

SB 669 would amend Code of Criminal Procedure, sec. 2.27, to specify that upon receiving a priority I report, or a report that alleged serious physical or sexual abuse of a child by a person responsible for the care, custody, or welfare of the child, a peace officer from the appropriate local law enforcement agency would have to investigate the report jointly with DPRS or with the agency responsible for conducting an investigation. As soon as possible, but not later than 24 hours, after being notified of the report, the peace officer would have to accompany the DPRS investigator in initially responding to the report.

The bill would take effect on September 1, 2003.

**SUPPORTERS
SAY:**

SB 669 would mandate that local law enforcement officers accompany DPRS caseworkers in responding initially to priority I reports. While current law requires DPRS and local law enforcement to conduct a joint investigation of a report of serious physical or sexual abuse of a child, they are not required expressly to respond together. Because both DPRS and local law enforcement jointly must conduct an investigation, it makes sense to combine their efforts from day one. The bill would benefit families and children because the

increased coordination between DPRS and law enforcement would lead to more timely and effective investigations.

Requiring peace officers to accompany DPRS caseworkers would provide additional protection for caseworkers entering possibly hostile environments where serious offenses allegedly had occurred. Particularly during the removal of a child, heightened emotions can lead to a dangerous escalation of the situation. Law enforcement could receive training in abuse and neglect cases and good interviewing skills so that their presence would not intimidate families and would not stifle communication. Further, law enforcement already has experience interacting with families on serious reports of abuse and neglect, which they jointly must investigate with DPRS under current law.

Further, the bill would enable law enforcement to initiate any criminal investigation that might ensue from the report in a timely manner. The offenses committed under a priority I report are felonies, and it is imperative that peace officers collect physical evidence immediately before it disappears. DPRS caseworkers are not trained in, nor are they responsible for, collecting physical evidence or preserving crime scenes. In one case involving the alleged rape of a young girl, lack of communication between DPRS and local law enforcement prevented evidence from being obtained in a timely manner and resulted in the suspect being released on bond. He then murdered the child and her two siblings by setting them on fire. By requiring better coordination between law enforcement and DPRS, the bill might prevent similar atrocities from occurring in the future.

The bill would change the language from the narrow term “investigator” to “peace officer,” which would encompass a broader range of law enforcement officers. Further, DPRS immediately would have to notify law enforcement on receipt of a priority I report, which would start the 24-hour time clocks for both DPRS and local law enforcement rolling at about the same time.

Concerns about the bill being an unfunded mandate are misplaced. The Legislative Budget Board (LBB) has projected no significant fiscal impact to local government as a result of the bill. After all, peace officers only would accompany DPRS workers on priority I calls, not every case.

Efforts between law enforcement and DPRS on serious cases has been coordinated successfully in Texas metropolitan areas for years, to the benefit of all parties.

**OPPONENTS
SAY:**

The presence of law enforcement officers might cause children and families to feel intimidated during the investigation, particularly if the officers informed them of their Miranda rights. Further, DPRS might be perceived as a policing agency, which would hinder the trust and rapport with families and victims necessary to help them and to ensure the child's safety.

Involving peace officers would do little to protect caseworkers and more likely would increase the level of confrontation between family members and investigators. First of all, many of the interviews occur in schools, where there is no threat to caseworkers' safety. For interviews that occur inside homes, caseworkers already can call for law enforcement assistance as needed, and there is no reason to assume that a priority I cases poses a greater safety risk to a caseworker than any other type of case. DPRS caseworkers should continue to use their discretion in involving peace officers, as under current law.

This bill would be an unfunded mandate for local law enforcement agencies. Requiring peace officers to accompany DPRS caseworkers on every priority I response undeniably would increase their already heavy workloads. LBB's fiscal note, which states that the costs could be absorbed by existing budgets, is unrealistic. Meeting the requirements of the bill would be particularly difficult for small, rural counties where law enforcement resources are limited.

This mandate inappropriately would deny law enforcement the flexibility to prioritize its criminal investigations. Only a small percentage of abuse and neglect reports are confirmed, and even fewer actually result in criminal prosecution, so requiring law enforcement to respond to all priority I reports would be a waste of resources.

The bill would not specify which organization was in charge of the investigation — DPRS or law enforcement — which could lead to confusion.