

SUBJECT: Process for court orders for child abuse and neglect investigations

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Rose, Elkins, Hughes, Naishtat, Walle

0 nays

4 absent — Herrero, Darby, Hernandez, Legler

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: For — Diana Martinez, TexProtects; Scott McCown, Center for Public Policy Priorities; (*Registered, but did not testify*: Barbara Elias-Perciful, Texas Loves Children, Inc.; William R. Cox)

Against — None

BACKGROUND: Family Code ch. 261, subch. D governs investigations into by the Department of Family and Protective Services (DFPS) into child abuse or neglect.

Family Code sec. 261.303 prohibits interference with an investigation of a report of child abuse or neglect conducted by DFPS or a designated agency. If admission to a home, school, or other location where the child may be cannot be obtained, then, for good cause, a court must order the parent or guardian to allow entrance for an interview, exam, and investigation. If a parent or guardian does not consent to the release of certain records that are required for an investigation, the court must, for good cause, order the record to be released.

DIGEST: CSSB 1064 would authorize DFPS to seek a court order to aid in an investigation into child abuse or neglect and would authorize courts to issue such orders.

Applications, process for court orders. The bill would establish requirements for affidavits that would have to accompany applications for court orders dealing with investigations into child abuse and neglect. The

affidavits would have to be signed by an investigator or other DFPS representative and would have to have facts sufficient to lead a person of ordinary prudence and caution to believe that:

- based on the available information, a child's physical or mental health or welfare had been or could be affected adversely by abuse or neglect;
- the order was necessary to aid in the investigation; and
- there was a fair probability that allegations of abuse or neglect would be sustained if the order was issued and executed.

After an order was executed or had been attempted to be executed, DFPS would have to file with a court a written report describing the execution of the order. Courts would have to keep records of the proceedings regarding the orders. These would be included with petitions for lawsuits filed by the DFPS to take possession of a child.

Courts would be authorized to require notice and a hearing before issuing an order to aid an investigation if there was no immediate risk to the child's safety and notice and a hearing were required to determine whether access to persons, records, or places or to transport the child was necessary to aid the investigation.

A court's denial of a request for an ex parte order would not prevent the issuance of a criminal warrant.

Orders for access to child. Court orders to parents, persons responsible for a child, or other persons for an interview or exam of a child no longer would have to be for good cause shown. Instead, upon the presentation of an application that was supported by an affidavit established by the bill, courts could order the interview or exam upon a finding that the affidavit was sufficient and could do so without prior notice or hearing. A court order could be issued to transport a child to an interview or investigation.

Orders relating to records. If persons possessing the child's records did not consent to the release of records relevant to an investigation after a request by DFPS, courts would be authorized to order the records released. Court orders for records release no longer would have to be on good cause shown. Instead, upon the presentation of an application supported by an affidavit required by the bill, courts could order the records released on a finding that the affidavit was sufficient and could do so without prior

notice or hearing. DFPS would have to notify a child's parents or whomever had custody of the child if it obtained access to a child's records to aid in an investigation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 1064 would clarify the process used to obtain court orders for child abuse and neglect and would expedite the process. While current law authorizes the use of court orders when parents or others hamper an investigation into child abuse or neglect, the process is unclear. This lack of specificity can slow down a court order, which can delay an investigation, and thus could put a child at risk. CSSB 1064 would address these problems by establishing a clear, uniform process for obtaining court orders.

The bill would establish criteria for applications for court orders to gain access to a child or the child's records so that the same standards were used to evaluate the requests statewide. The criteria would include those that allow orders to be issued if a child is in danger. For example, the order would have to be based on information that a child's health had been or could be adversely affected by abuse or neglect.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute made several changes to the Senate version of the bill, including adding the requirement for an affidavit with certain information when an application is made for a court order, changing what has to be in a report filed by DFPS with the court after an executing a court order, and adding the provisions dealing with ex parte orders.