

- SUBJECT:** Exception to Family Code requirements for taking child into custody
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Gallego, Aliseda, Carter, Christian, Rodriguez, Zedler
0 nays
3 absent — Hartnett, Burkett, Y. Davis
- WITNESSES:** For — Fred Hernandez; (*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney Susan D. Reed)
Against — None
- BACKGROUND:** Chapter 14 of the Code of Criminal Procedure describes how an adult can be arrested without a warrant. Family Code, sec. 52.02 describes how a child must be taken into custody, and requires a person without unnecessary delay and before taking the child anywhere other than a juvenile processing office, to release the child to a parent or guardian, take the child to a detention facility, or perform certain other actions according to the circumstances.
- DIGEST:** HB 2374 would add art. 14.07 to the Code of Criminal Procedure, stating that a child under 17 who had lawfully been taken into custody could be detained, interviewed, and processed by a federal law enforcement officer in Texas or by a law enforcement officer of another state in that state, and would not be considered in custody under the Code of Criminal Procedure or the Family Code until the child had been released to a person or facility as required by sec. 52.02 of the Family Code.
- Section 52.02 of the Family Code would reference art. 14.07 of the Code of Criminal Procedure, which would create an exception to the Family Code’s requirements for taking a child into custody.
- The bill would take effect September 1, 2011, and would apply only to children taken into custody on or after that date.

**SUPPORTERS
SAY:**

HB 2374 would allow border patrol officers and other state officers to uphold their laws, without detrimentally affecting Texas' need to uphold its laws. Currently, drug cartels use minors as mules to take drugs across the border. When border patrol officers pick them up, the border patrol officers need to question them and determine what crimes were committed, if they are U.S. citizens, and if they are minors.

Eleven hours may pass by the time the child is determined to be a minor and brought to a juvenile processing facility hours away. A child must without unnecessary delay be taken to a juvenile processing facility or be released to a parent or guardian as required under the Family Code. Case law has found that taking 11 hours would likely be considered unnecessary delay, so the child is considered to be illegally detained, and any evidence surfacing during that time, like a confession, is not admissible in court.

Although it is unclear under current law whether the Family Code custody section applies to federal officers, this uncertainty has resulted in minors being released even though they committed a serious crime. HB 2374 would fix that flaw by not considering the child to be in custody until the border patrol delivered the child to the appropriate person or facility. The child's rights would be protected through the law applicable to that officer, whether federal law or the law of another state. Both Texas law and federal law would be upheld, and the child would be held accountable for any criminal conduct.

**OPPONENTS
SAY:**

The Family Code requirements for taking children into custody in Texas apply to all children and therefore to all law enforcement officers in Texas. HB 2374 would seriously undermine the protections that minors should have. Regardless of whether a child comes from across the border, all children deserve those protections, no matter how inconvenient it might be for law enforcement.

Moreover, stating that a child is not in custody does not mean the child is not in fact in custody, so this law could be subject to constitutional challenge.

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OTHER
OPPONENTS
SAY:

HB 2374 would fix a flaw that should be fixed, but the change would involve only children so should be exclusively addressed in the Family Code, not in the Code of Criminal Procedure.