

SUBJECT: Amending state responses to children missing during DFPS investigations

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

VOTE: 6 ayes — Dutton, Riddle, Peña, Rose, Sanford, J. White

0 nays

1 absent — Hughes

WITNESSES: For — Brian Manley, Austin Police Department; Katherine McAnally, Burnet County Attorney's Office; Bill Gravell, Justice of the Peace and Constables Association of Texas; Alicia Hill, Love, Colton Foundation; Donald "Chris" White, Milam County Sheriff's Office; Robert Chody, Williamson County Constable; Raquel Helfrich, Colton's family; Liz St. Clair; (*Registered, but did not testify*: Sarah Crockett, Texas CASA; Kyle Ward, Texas PTA; Casey Smith, United Ways of Texas; and 16 individuals)

Against — Isaac Sommers, Texas Home School Coalition Association

On — Angela Goodwin, Department of Family and Protective Services; (*Registered, but did not testify*: Derek Prestridge, Texas Department of Safety)

BACKGROUND: Investigations of reports of child abuse and neglect are conducted in accordance with Family Code, ch. 261, which provides the powers and duties of certain child welfare and law enforcement agencies when conducting these investigations.

Sec. 261.301 requires the Department of Family and Protective Services (DFPS) to conduct a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for the child's care, custody, or welfare.

If DFPS cannot locate the child or the family of a child who is the subject

of a report being investigated, the agency — after exhausting all available means — may initiate a process to receive a court order to place the family members on the Texas Crime Information Center’s child safety check alert list. According to sec. 261.3022, DFPS may request assistance from the county attorney, district attorney, or criminal district attorney, who may then file an application to request the issuance of an order for local law enforcement to place the family on the child safety check alert list.

Section 262.3023 allows a law enforcement officer who locates the missing family or child to remove the child from the family, if certain conditions exist. If these conditions do not exist, the officers must obtain the child’s address and other relevant information and report it to DFPS.

DIGEST:

HB 2053 would amend the procedures for child abuse and neglect investigations during which the child or the child’s family is missing.

The Department of Family and Protective Services (DFPS) would have to report to the Department of Public Safety (DPS) when DFPS was unable to locate the child or family during abuse and neglect investigations that were assigned the highest priority. DPS then would be required to conduct an investigation to find the child and family using all available resources, including the child safety check alert list of the Texas Crime Information Center (TCIC).

The bill would eliminate the process in current statute that requires a court to order local law enforcement to place a family under investigation on TCIC’s alert list. Instead, the bill would require DPS, upon receiving notice from DFPS, to notify TCIC to place the child and the child’s family on the alert list.

HB 2053 also would require additional information, if it was available, to be included on the TCIC child safety check alert list, including:

- physical descriptions of the child and the family member alleged to have abused or neglected the child and a description of the motor

- vehicle suspected of transporting the child;
- the DFPS case number and a telephone number for the employee responsible for the investigation; and
- the location, date, and time when the child was last seen.

The bill would expand the duties of law enforcement officers who encountered a child or a family on the alert list. The officers would be required to:

- immediately detain all individuals on the alert list who were present;
- take temporary custody of the child who was the subject of the alert;
- take investigative detention of all motor vehicles in the alert list;
- notify DFPS of the location of the individuals detained; and
- remain at the location of initial contact with the detained persons for up to six hours until DFPS was able to respond to the location.

If DFPS was unable to respond within six hours, the law enforcement officers would have to release the individuals and vehicles after obtaining the child's address and any other relevant information, which then would be reported to DFPS. Law enforcement would be required to report to TCIC that the child had been located.

The bill would specify that the requirement to detain an individual or motor vehicle would not preclude the enforcement of other state or federal laws.

HB 2053 would take effect September 1, 2015.

**SUPPORTERS
SAY:**

HB 2053 would help prevent tragedies that occur when children and their families go missing during Department of Family and Protective Services (DFPS) investigations of abuse and neglect. The bill would be called "Colton's Law," in honor of a young boy in Texas who died when he and his family went missing while under investigation by DFPS.

The bill would require DFPS, under certain circumstances, to notify the Department of Public Safety (DPS) when DFPS could not locate the child or the family of a child who was the subject of an abuse or neglect report. This would help DFPS workers focus on the families they could serve, rather than using time and resources to find families who are missing — many of whom are evading the agency. The bill would ensure that DPS received information about missing families only when the reports were of the highest priority and when DFPS had exhausted all means to locate the families themselves.

Under current law, placing a child on TCIC's child safety check alert list can take months. Eliminating the need to go through a court to place a child on the alert list would expedite and streamline the process of information sharing across agencies.

Law enforcement would be aware that these highest-priority families were being sought, resulting in the direction of more attention and resources toward finding these children. Many children and families that go missing under DFPS investigation currently are not placed on the alert list because of how long it can take, which can endanger these children. The gravity of these cases and the need to find families quickly outweighs the concerns that removing the court's oversight would weaken due process.

HB 2053 would require additional details to be included on the child safety check alert list to help law enforcement more easily recognize missing families and their vehicles. The bill also would require DFPS case information to be included on the alert list, which would help bridge the work of DFPS and DPS. This additional information for the alert list would be used only for investigative purposes. It would not have any criminal implications for individuals on the list.

The bill would remove jurisdictional obstacles to helping children by allowing DFPS to alert DPS directly about missing families. This would expedite the submission of information about missing families to TCIC's alert list, which enables any law enforcement officer to intervene if contact is made with the child or the child's family.

OPPONENTS
SAY:

HB 2053 has good intentions, but its implementation might not serve its intended purpose of protecting more children. Current law provides processes that would have protected someone in Colton's situation, and agencies should be educated on existing policies so people know and can follow the systems already in place.

HB 2053 could create new cracks in the system by requiring DFPS to report directly to DPS when a family could not be found and by requiring DPS, rather than local law enforcement, to submit information to TCIC. This could delay the notice to local law enforcement agencies and hinder their ability to find the missing child or family.

HB 2053's elimination of the court process would remove a level of oversight and due process needed to protect innocent families and state resources. The bill should define what DFPS would have to do before it could reach out to DPS and place a family on the alert list. It would cast a broad net that could ensnare some innocent families, including those who might be on an extended trip while under DFPS investigation. The court process required under current law helps ensure the proper use of law enforcement's resources and the TCIC system.

Including detailed information, such as on a car in which the child might be transported, could raise privacy concerns. The detention policies could be misused if law enforcement used the time to ferret out more information. Current case law limits the time a person may be detained before constitutional rights are infringed upon, and the six hours allowed might not be sufficient. Detentions need a basis, and families under DFPS investigation have not been found conclusively to have neglected or abused their children. Current statute respects limits on detentions by requiring law enforcement to release the children and families unless there are specific grounds for immediate removal of the child.

HB 2053 could drain DPS manpower to help find these children when the agency has competing duties. Adding families to the child safety check alert list could give DPS new responsibilities that might be difficult to manage. The bill's requirement that DPS hold families or children for up

to six hours could occupy the officers' time and attention at the expense of other duties. It also could be unsafe if it forced individuals to remain on the side of the road or kept officers with a family in a tense or dangerous situation for a long period. The bill should require a shorter response time from DFPS, especially in light of the high priority of these cases.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative net impact of \$3.2 million to general revenue through fiscal 2016-17 due to the need for additional DPS resources.