

SUBJECT: Allowing agreed orders for removal of a parent or caregiver from a home

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Neave, Swanson, Cook, Frank, Ramos, Talarico, Vasut, Wu

0 nays

1 absent — Leach

WITNESSES: For — Julia Hatcher, Texas Association of Family Defense Attorneys; William Morris, Texas Family Law Foundation; Travis Gates; (*Registered, but did not testify*: Judy Powell, Parent Guidance Center; Maggie Luna, Statewide Leadership Council; Amy Bresnen, Texas Family Law Foundation; Meagan Corser, Texas Home School Coalition; Andrew Brown, Texas Public Policy Foundation; Jason Vaughn, Texas Young Republicans; Kerrie Judice, TexProtects; Melissa Gates; Cynthia Gates; Raquel Gates; Ruth Grinestaff; Cassie Grinestaff; Thomas Parkinson)

Against — None

On — Marta Talbert, Department of Family and Protective Services

BACKGROUND: Sec. 262.1015 requires that if the Department of Family and Protective Services (DFPS) determines that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, DFPS must file a petition for the removal of the alleged perpetrator rather than attempt to remove the child from the residence.

Family Code ch. 262, subch. B governs the procedures for suits by a governmental agency to remove children from their homes without prior notice and a hearing, requiring certain court findings before removal can be ordered. Subch. B also governs governmental agency suits filed after taking possession of a child in an emergency without a court order,

requiring that the court return a child at the initial hearing unless certain court findings are made.

Interested parties have suggested that even though current law allows for parent and caregiver removal by court order, a mechanism in family law is needed that would allow a parent or caregiver to voluntarily have themselves removed from a home in order to keep the child in the home, reducing the trauma often associated with the removal of a child.

DIGEST:

CSHB 2308 would allow an alleged perpetrator of child abuse or neglect to agree in writing to an order requiring the alleged perpetrator to leave the residence of the child. Such an agreement would be subject to the approval of the court and would be enforceable civilly or criminally, but not as a contract.

The agreed order could not be used against an alleged perpetrator as an admission of child abuse or neglect and would have to contain the following statement in boldface type and capital letters: "YOUR AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION OF CHILD ABUSE OR NEGLECT."

At any time, a person affected by an agreed order could request that the court terminate the order, and the court would be required to terminate the order if the court found the order was no longer needed.

Court findings. The bill would add to the findings a court would be required to make before ordering removal of a child without prior notice and a hearing or after taking possession of a child in an emergency without a court order the findings that:

- the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under the bill's provisions allowing an alleged perpetrator to agree to a removal order or under Family Code sec. 262.1015 or a protective order issued under applicable law; and

- placing the child with a caregiver under an authorized parental child safety placement agreement was offered but refused, was not possible because there was no time to conduct the caregiver evaluation, or would pose an immediate danger to the physical health or safety of the child.

The bill would take effect September 1, 2021, and would apply only to a suit affecting the parent-child relationship filed on or after that date.