

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1064
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law allows the Child Protective Services (CPS) division of the Department of Family and Protective Services (DFPS) investigating a report of child abuse or neglect to access medical records regarding the abuse or neglect of the child, but not to medical records that do not relate specifically to the abuse or neglect. Adult Protective Services (APS) has express authority to access protected health information for investigative purposes regardless of who made the report to APS. Texas law contains no analogous provision for CPS.

C.S.S.B. 1064 authorizes DFPS, without filing suit, to seek a court order in aid of investigation. This bill sets forth certain procedures with regard to an investigation of a report of child abuse or neglect and related court proceedings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.302, Family Code, by amending Subsection (g), as follows:

(g) Authorizes the Department of Family and Protective Services (DFPS), without filing suit, to seek a court order in aid of investigation under Section 261.303.

SECTION 2. Amends Section 261.303, Family Code, as follows:

Sec. 261.303. INTERFERENCE WITH INVESTIGATION; COURT ORDER. (a) Prohibits a person from interfering with an investigation of a report of child abuse or neglect conducted by DFPS or designated agency, and authorizes a court to enforce the right of DFPS to conduct an investigation under this subchapter.

(b) Requires the court having family law jurisdiction, including an associate judge designated by the court, if admission to the home, school, or any place where the child may be cannot be obtained, or if consent to transport a child for purposes relating to an interview or investigation cannot be obtained, then on presentation of an affidavit described by Subsection (e) that is executed by an investigator or authorized representative of DFPS, rather than for good cause shown, without prior notice or a hearing, to order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance, transport of the child, or both entrance and transport for the interview, examination, and investigation.

(c) Requires the court having family law jurisdiction, if a parent or person responsible of the child's prior medical, psychological, or psychiatric records or to a medical, psychological, or psychiatric examination of the child that is requested by DFPS or designated agency, then on presentation of an affidavit described by Subsection (e) that is executed by an investigator or authorized representative of DFPS, including any associate judge designated by the court, to without prior notice or a hearing, rather than for good cause shown, order the records to be

released or the examination to be made at the times and places designated by the court.

(d) Requires the court having family law jurisdiction, without prior notice or a hearing, if a person, agency or entity having possession of records relating to a child that are relevant to an investigation does not consent to the release of the records on the request of DFPS or designated agency, then on presentation of an affidavit described by Subsection (e) that is executed by an investigator or authorized representative of DFPS, including any associate judge designated by the court, to order the records to be released at the time and place designated by the court.

(e) Requires that an affidavit required under Subsection (b), (c), or (d), state facts sufficient to lead a person of ordinary prudence and caution to believe that based on information available, a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and the requested order is necessary to aid in the investigation.

(f) Provides that an affidavit used to obtain a court order in aid of investigation under this section is not a pleading, and may not be deemed a pleading, for purposes of the Texas Rules of Civil Procedure.

(g) Creates this subsection from existing text.

(h) Redesignates Subsection (e) as Subsection (h). Makes no further changes to this subsection.

(i) Authorizes a court having family law jurisdiction to designate an associate judge to issue an order in aid of investigation under this section. Provides that an order issued by an associate judge is immediately effective without the ratification or signature of the court making the designation.

(j) Requires an investigator or authorized representative of DFPS executing an order issued under this section to promptly file with the court that issued the order a written report stating whether the ordered access was granted, the interview was conducted, or other action was taken in accordance with the order.

(k) Requires a court issuing an order in aid of investigation under this section to keep a record of all the proceedings before the court under this subchapter and to certify and deliver the record to the clerk of the court accompanied by all the original papers relating to the proceedings, including a report filed with the court under Subsection (j). Provides that the record of proceedings, including any affidavit presented to the court and any report filed with the court, is confidential under Section 261.201 (Confidentiality and Disclosure of Information) and may only be disclosed as provided by that section.

(l) Requires DFPS, if DFPS files a suit affecting the parent-child relationship under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child), to include with its original petition and prelitigation affidavit, order, or report relating to an order in aid of investigation issued under this section.

(m) Requires DFPS, as soon as practicable after DFPS obtains access to records of a child pursuant to an order issued under this section, to notify the child's parents or other person with legal custody of the child that DFPS has obtained the records.

(n) Provides that access to a confidential record under this subchapter does not constitute a waiver of confidentiality.

SECTION 3. Effective date: upon passage or September 1, 2009.