

By: Hupp

H.B. No. 1752

A BILL TO BE ENTITLED

1 AN ACT

2 relating to investigations and other procedures with respect to  
3 allegations of child abuse or neglect.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 261.201, Family Code, is amended by  
6 amending Subsections (b) and (c) and adding Subsection (i) to read  
7 as follows:

8 (b) A court shall [~~may~~] order the disclosure of information  
9 that is confidential under this section if:

10 (1) a motion has been filed with the court requesting  
11 the release of the information;

12 (2) a notice of hearing has been served on the  
13 investigating agency and all other interested parties; and

14 (3) after an evidentiary hearing and an in camera  
15 review of the requested information, the court determines that the  
16 disclosure of the requested information is[+]

17 [~~(A) essential to the administration of justice,~~  
18 ~~and~~

19 [~~(B)~~] not likely to endanger the life or safety  
20 of:

21 (A) [~~(i)~~] a child who is the subject of the  
22 report of alleged or suspected abuse or neglect;

23 (B) [~~(ii)~~] a person who makes a report of alleged  
24 or suspected abuse or neglect; or

1                    (C) [~~(iii)~~] any other person who participates in  
2 an investigation of reported abuse or neglect or who provides care  
3 for the child.

4            (c) In addition to Subsection (b), a court, on its own  
5 motion, may order disclosure of information that is confidential  
6 under this section if:

7                    (1) the order is rendered at a hearing for which all  
8 parties have been given notice;

9                    (2) the court finds that disclosure of the information  
10 is[+]

11                    [~~(A) essential to the administration of justice,~~  
12 ~~and~~

13                    [~~(B)~~] not likely to endanger the life or safety  
14 of:

15                    (A) [~~(i)~~] a child who is the subject of the  
16 report of alleged or suspected abuse or neglect;

17                    (B) [~~(ii)~~] a person who makes a report of alleged  
18 or suspected abuse or neglect; or

19                    (C) [~~(iii)~~] any other person who participates in  
20 an investigation of reported abuse or neglect or who provides care  
21 for the child; and

22                    (3) the order is reduced to writing or made on the  
23 record in open court.

24            (i) Subsection (b) may not be construed to prevent a person  
25 who makes a report of alleged or suspected abuse or neglect from  
26 suing for injunctive relief as provided by other law.

27            SECTION 2. Section 261.302, Family Code, is amended by

1 amending Subsections (a), (c), and (e), and adding Subsection (f)  
2 to read as follows:

3 (a) The investigation may include:

4 (1) a visit to the child's home, unless the alleged  
5 abuse or neglect can be confirmed or clearly ruled out without a  
6 home visit; and

7 (2) an interview with and examination of the subject  
8 child~~[, which may include a medical, psychological, or psychiatric~~  
9 ~~examination]~~.

10 (c) The investigation may include an interview with the  
11 child's parents and an interview with ~~[and medical, psychological,~~  
12 ~~or psychiatric examination of]~~ any child in the home.

13 (e) An interview with a child conducted by the investigating  
14 agency or another person under the direction of the investigating  
15 agency ~~[alleged to be a victim of physical abuse or sexual abuse]~~  
16 shall be audiotaped or videotaped ~~[unless the investigating agency~~  
17 ~~determines that good cause exists for not audiotaping or~~  
18 ~~videotaping the interview in accordance with rules of the agency.~~  
19 ~~Good cause may include, but is not limited to, such considerations~~  
20 ~~as the age of the child and the nature and seriousness of the~~  
21 ~~allegations under investigation. Nothing in this subsection shall~~  
22 ~~be construed as prohibiting the investigating agency from~~  
23 ~~audiotaping or videotaping an interview of a child on any case for~~  
24 ~~which such audiotaping or videotaping is not required under this~~  
25 ~~subsection]~~. The fact that the investigating agency failed to  
26 audiotape or videotape an interview is admissible at the trial of  
27 the offense that is the subject of the interview. An investigating

1 agency or another person under the direction of the investigating  
2 agency that conducts an interview with a child under this  
3 subsection shall make a copy of the videotape or audiotape recorded  
4 at the interview available to a parent of the child immediately  
5 after the interview.

6 (f) An investigation that includes an examination of the  
7 subject child as authorized by Subsection (a)(2) may not include a  
8 medical, psychological, or psychiatric examination of the child  
9 unless:

10 (1) the child's parent, conservator, or legal guardian  
11 consents in writing to the examination; or

12 (2) a court orders the examination.

13 SECTION 3. Section 261.315, Family Code, is amended to read  
14 as follows:

15 Sec. 261.315. REMOVAL OF CERTAIN INVESTIGATION INFORMATION  
16 FROM RECORDS. (a) At the conclusion of an investigation in which  
17 the department determines that the person alleged to have abused or  
18 neglected a child did not commit abuse or neglect, the department  
19 shall notify the person of that conclusion and shall ~~[of the~~  
20 ~~person's right to request the department to]~~ remove all information  
21 about the person's alleged role in the abuse or neglect report from  
22 the department's records and all other information related to the  
23 child's family and household, unless the person requests in writing  
24 that the department keep the information in the department's  
25 records.

26 ~~[(b) On request under Subsection (a) by a person whom the~~  
27 ~~department has determined did not commit abuse or neglect, the~~

1 ~~department shall remove information from the department's records~~  
2 ~~concerning the person's alleged role in the abuse or neglect~~  
3 ~~report.]~~

4 (c) The board shall adopt rules necessary to administer this  
5 section.

6 SECTION 4. Subchapter B, Chapter 262, Family Code, is  
7 amended by adding Sections 262.1001 and 262.1002 to read as  
8 follows:

9 Sec. 262.1001. DESIGNATION OF ALTERNATIVE PLACEMENT OF  
10 CHILD; PREREQUISITES TO TAKING POSSESSION OF CHILD. (a) A  
11 governmental entity that determines after an investigation that a  
12 child should be removed from the child's home shall:

13 (1) inform the child's parent, conservator, or legal  
14 guardian that the person may designate another person to care for  
15 the child as an alternative to being taken into possession by the  
16 entity preceding the filing of and during the pendency of a suit  
17 affecting the parent-child relationship; and

18 (2) if a designation is made under Subdivision (1),  
19 place the child in the care of the person designated by the parent,  
20 conservator, or legal guardian, except as provided by Section  
21 262.1002.

22 (b) A governmental entity may not take possession of a child  
23 with or without a court order unless the governmental entity  
24 complies with the requirements of Subsection (a)(1) and the parent,  
25 conservator, or legal guardian of the child refuses or is unable to  
26 designate a person with whom to place the child.

27 (c) The right of the parent, conservator, or legal guardian

1 of the child to designate the person with whom the child is placed  
2 preceding the filing of and during the pendency of a suit affecting  
3 the parent-child relationship continues until the court terminates  
4 the person's parent-child relationship with respect to the child,  
5 appoints a permanent managing conservator of the child, or orders  
6 that the child be returned to the child's home. The parent,  
7 conservator, or legal guardian may make a subsequent designation in  
8 accordance with this section, and the department shall place the  
9 child with the person subsequently designated, if the child is  
10 removed from the care of a person who was previously designated.

11 (d) A governmental entity that places a child with a person  
12 designated by the child's parent, conservator, or legal guardian as  
13 provided by this section shall:

14 (1) if the child is being regularly breast-fed,  
15 provide to the child's mother scheduled visitation periods at  
16 appropriate intervals to allow the mother to continue  
17 breast-feeding the child; and

18 (2) otherwise provide to the child's parent,  
19 conservator, or legal guardian opportunities for supervised  
20 visitation with the child.

21 (e) At each hearing conducted under this chapter or in a  
22 suit affecting the parent-child relationship filed under this  
23 chapter, the court shall inform the child's parent, conservator, or  
24 legal guardian orally and in writing of that person's right under  
25 this section to designate the person with whom the child is placed.

26 Sec. 262.1002. PRESUMPTION OF BEST INTEREST. (a) It is a  
27 rebuttable presumption that the placement of a child with a person

1 designated by the child's parent, conservator, or legal guardian  
2 under this section is in the child's best interest.

3 (b) The presumption under this section is rebutted if the  
4 court finds that the designated person or another person in the  
5 designated person's household has:

6 (1) sexually abused a child; or

7 (2) otherwise abused or neglected a child and that  
8 abuse or neglect caused serious injury to or the death of the child.

9 (c) If the presumption in this section is rebutted, the  
10 court may:

11 (1) render a protective order under Title 4 for the  
12 protection of the child, if appropriate, and authorize the  
13 placement of the child with the designated person; or

14 (2) require that the parent, conservator, or legal  
15 guardian designate a different person with whom to place the child  
16 preceding the filing of and during the pendency of a suit affecting  
17 the parent-child relationship.

18 SECTION 5. Section 262.101, Family Code, is amended to read  
19 as follows:

20 Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF  
21 CHILD. An original suit filed by a governmental entity that  
22 requests permission to take possession of a child without prior  
23 notice and a hearing must be supported by an affidavit sworn to by a  
24 person with personal knowledge and stating facts sufficient to  
25 satisfy a person of ordinary prudence and caution that:

26 (1) there is an immediate danger to the physical  
27 health or safety of the child or the child has been a victim of

1 neglect or sexual abuse and that continuation in the home would be  
2 contrary to the child's welfare;

3 (2) there is no time, consistent with the physical  
4 health or safety of the child, for a full adversary hearing under  
5 Subchapter C; ~~and~~

6 (3) reasonable efforts, consistent with the  
7 circumstances and providing for the safety of the child, were made  
8 to prevent or eliminate the need for the removal of the child; and

9 (4) the parent, conservator, or legal guardian of the  
10 child refuses or is unable to designate a person with whom to place  
11 the child under Section 262.1001.

12 SECTION 6. Section 262.102(a), Family Code, is amended to  
13 read as follows:

14 (a) Before a court may, without prior notice and a hearing,  
15 issue a temporary restraining order or attachment of a child in a  
16 suit brought by a governmental entity, the court must find that:

17 (1) there is an immediate danger to the physical  
18 health or safety of the child or the child has been a victim of  
19 neglect or sexual abuse and that continuation in the home would be  
20 contrary to the child's welfare;

21 (2) there is no time, consistent with the physical  
22 health or safety of the child and the nature of the emergency, for a  
23 full adversary hearing under Subchapter C; ~~and~~

24 (3) reasonable efforts, consistent with the  
25 circumstances and providing for the safety of the child, were made  
26 to prevent or eliminate the need for removal of the child; and

27 (4) the parent, conservator, or legal guardian of the



1 child refuses or is unable to designate a person with whom to place  
2 the child under Section 262.1001.

3 SECTION 7. Section 262.104, Family Code, is amended to read  
4 as follows:

5 Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY  
6 WITHOUT A COURT ORDER. If there is no time to obtain a temporary  
7 restraining order or attachment before taking possession of a child  
8 consistent with the health and safety of that child, an authorized  
9 representative of the Department of Protective and Regulatory  
10 Services, a law enforcement officer, or a juvenile probation  
11 officer may take possession of a child without a court order under  
12 the following conditions, only if the parent, conservator, or legal  
13 guardian of the child refuses or is unable to designate a person  
14 with whom to place the child under Section 262.1001 and:

15 (1) on personal knowledge of facts that would lead a  
16 person of ordinary prudence and caution to believe that there is an  
17 immediate danger to the physical health or safety of the child;

18 (2) on information furnished by another that has been  
19 corroborated by personal knowledge of facts and all of which taken  
20 together would lead a person of ordinary prudence and caution to  
21 believe that there is an immediate danger to the physical health or  
22 safety of the child;

23 (3) on personal knowledge of facts that would lead a  
24 person of ordinary prudence and caution to believe that the child  
25 has been the victim of sexual abuse;

26 (4) on information furnished by another that has been  
27 corroborated by personal knowledge of facts and all of which taken

1 together would lead a person of ordinary prudence and caution to  
2 believe that the child has been the victim of sexual abuse; or

3 (5) on information furnished by another that has been  
4 corroborated by personal knowledge of facts and all of which taken  
5 together would lead a person of ordinary prudence and caution to  
6 believe that the parent or person who has possession of the child is  
7 currently using a controlled substance as defined by Chapter 481,  
8 Health and Safety Code, and the use constitutes an immediate danger  
9 to the physical health or safety of the child.

10 SECTION 8. Subchapter B, Chapter 262, Family Code, is  
11 amended by adding Sections 262.114 and 262.115 to read as follows:

12 Sec. 262.114. FILING PETITION AFTER PLACING CHILD WITH  
13 DESIGNATED PERSON. (a) A governmental entity that removes a child  
14 from the child's home and places the child with a designated person  
15 in accordance with Section 262.1001 shall, without unnecessary  
16 delay:

17 (1) file a suit affecting the parent-child  
18 relationship;

19 (2) request the court to appoint an attorney ad litem  
20 for the child; and

21 (3) request an initial hearing to be held not later  
22 than the first working day after the date the child was removed from  
23 the child's home.

24 (b) For purposes of Section 262.201, the child is considered  
25 to have been taken into possession by the governmental entity on the  
26 date the entity removed the child from the child's home.

27 Sec. 262.115. INITIAL HEARING AFTER PLACING CHILD WITH

1 DESIGNATED PERSON. (a) The court in which a suit has been filed  
2 after a child has been removed from the child's home and placed with  
3 a designated person in accordance with Section 262.1001 shall hold  
4 an initial hearing on or before the first working day after the date  
5 the child was removed. The court shall render orders that are  
6 necessary to protect the physical health and safety of the child.  
7 If the court is unavailable for a hearing on the first working day,  
8 the hearing shall be held not later than the first working day after  
9 the court becomes available, provided that the hearing is held not  
10 later than the third working day after the date the child was  
11 removed.

12 (b) The initial hearing may be ex parte and proof may be by  
13 sworn petition or affidavit if a full adversary hearing is not  
14 practicable.

15 (c) If the initial hearing is not held within the time  
16 required, the child shall be returned to the parent, conservator,  
17 or legal guardian entitled to possession of the child.

18 SECTION 9. Section 261.201, Family Code, as amended by this  
19 Act, applies only to a motion for the disclosure of confidential  
20 information made on or after the effective date of this Act. A  
21 motion for the disclosure of confidential information made before  
22 the effective date of this Act is governed by the law in effect on  
23 the date the motion was made, and the former law is continued in  
24 effect for that purpose.

25 SECTION 10. Section 261.302, Family Code, as amended by  
26 this Act, applies only to an investigation of an allegation of child  
27 abuse or neglect initiated on or after the effective date of this

1 Act. An investigation of an allegation of child abuse or neglect  
2 initiated before the effective date of this Act is governed by the  
3 law in effect on the date the investigation was initiated, and the  
4 former law is continued in effect for that purpose.

5 SECTION 11. Section 261.315, Family Code, as amended by  
6 this Act, applies to an investigation of an allegation of child  
7 abuse or neglect pending with the Department of Protective and  
8 Regulatory Services on or initiated on or after the effective date  
9 of this Act.

10 SECTION 12. Sections 262.1001 and 262.1002, Family Code, as  
11 added by this Act, apply only to the removal of a child from the  
12 child's residence that occurs on or after the effective date of this  
13 Act. The removal of a child from the child's residence that  
14 occurred before the effective date of the Act is governed by the law  
15 in effect on the date the child was removed, and the former law is  
16 continued in effect for that purpose.

17 SECTION 13. Sections 262.101, 262.102, and 262.104, Family  
18 Code, as amended by this Act, apply only to a suit affecting the  
19 parent-child relationship requesting an order to take possession of  
20 a child that is filed or to a child that is taken into possession  
21 without a court order on or after the effective date of this Act. A  
22 suit filed before the effective date of this Act or a child taken  
23 into possession before the effective date of this Act is governed by  
24 the law in effect on the date the suit was filed or the child was  
25 taken into possession, as appropriate, and the former law is  
26 continued in effect for that purpose.

27 SECTION 14. This Act takes effect September 1, 2003.