

BILL ANALYSIS

Senate Research Center

S.B. 1440
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It is inefficient to delay the effectiveness of a child support or child protection associate judge's proposed order or judgment when a request for de novo review of such order or judgment has not been filed or has been waived, by requiring the signature of the referring court in order to become the order of the referring court.

S.B. 1440 amends current law relating to orders and judgments rendered by associate judges in child support and child protection cases and to the investigation of child abuse and neglect.

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 201.1041(a), Family Code, to require, if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, that the proposed order or judgment of the associate judge, other than a proposed order or judgment providing for enforcement by contempt or the immediate incarceration of a party, become the order or judgment of the referring court by operation of law without the signature of the judge of the referring court or ratification by the referring court.

SECTION 2. Amends Section 201.2041(a), Family Code, to provide that the proposed order or judgment of the associate judge becomes the order or judgment of the referring court by operation of law without the signature of the judge of the referring court or ratification by the referring court if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived.

SECTION 3. Amends Section 261.302, Family Code, by adding Subsection (g), to authorize the Department of Family and Protective Services (DFPS), without filing suit, to seek a court order in aid of an investigation under Section 261.303 (Interference with Investigation; Court Order).

SECTION 4. Amends Section 261.303, Family Code, by amending Subsections (a), (b), and (c) and adding Subsections (c-1), (c-2), (c-3), (f), (g), (h), (i), (j), (k), (l), and (m), as follows:

(a) Prohibits a person from interfering with an investigation of a report of child abuse or neglect conducted by DFPS or the designated agency, and authorizes a court to render an order to assist DFPS in an investigation under this subchapter.

(b) Authorizes the court having family law jurisdiction, including any associate judge designated by the court, on finding that the affidavit is sufficient and without prior notice or a hearing, 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 application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of DFPS, 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. Deletes existing text requiring the court having family

law jurisdiction, if admission to the home, school, or any place where the child may be cannot be obtained, then for good cause shown, 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 for the interview, examination, and investigation.

(c) Authorizes the court having family law jurisdiction, including any associate judge designated by the court, on finding that the affidavit is sufficient and without prior notice or a hearing, if a parent or person responsible for the child's care does not consent to release 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 application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of DFPS, to order the records to be released or the examination to be made at the times and places designated by the court. Deletes existing text requiring the court having family law jurisdiction, for good cause shown, to order the records to be released or the examination to be made at the times and places designated by the court.

(c-1) Authorizes the court having family law jurisdiction, including any associate judge designated by the court, on finding that the affidavit is sufficient and without prior notice or a hearing, if a person 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 application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of DFPS, to order the records to be released at the time and place designated by the court.

(c-2) Requires that an application filed under this section be accompanied by an affidavit executed by an investigator or authorized representative of DFPS that states 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; the requested order is necessary to aid in the investigation; and there is a fair probability that allegations of abuse or neglect will be sustained if the order is issued and executed.

(c-3) Authorizes an application and supporting affidavit used to obtain a court order in aid of an investigation under this section to be filed on any day, including Sunday.

(f) Authorizes a court to designate an associate judge to render an order in aid of an investigation under this section. Provides that an order rendered by an associate judge is immediately effective without the ratification or signature of the court making the designation.

(g) Requires DFPS, as soon as practicable after executing the order or attempting to execute the order, as applicable, to file with the clerk of the court that rendered the order a written report stating the facts surrounding the execution of the order, including the date and time the order was executed and the name of the investigator or authorized representative executing the order; or the reasons why DFPS was unable to execute the order.

(h) Requires a court issuing an order in aid of an investigation under this section to keep a record of all the proceedings before the court under this subchapter, including a report filed with the court under Subsection (g). Provides that the record of proceedings, including any application and supporting affidavit presented to the court and any report filed with the court under Subsection (g), is confidential and may only be disclosed as provided by Subsection (i) or Section 261.201.

(i) Requires DFPS, if DFPS files a suit under Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child), to include with its original petition a copy of the record of all the proceedings before the court under this subchapter, including an application and supporting affidavit for an order under this section and any report relating to an order in aid of an investigation.

(j) Requires DFPS, as soon as practicable after DFPS obtains access to records of a child under an order in aid of an investigation, to notify the child's parents or another person with legal custody of the child that DFPS has obtained the records.

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

(l) Provides that this section does not prevent a court from requiring notice and a hearing before issuance of an order in aid of an investigation under this section if the court determines that there is no immediate risk to the safety of the child and notice and a hearing are required to determine whether the requested access to persons, records, or places or transport of the child is necessary to aid in the investigation.

(m) Provides that a court's denial of a request for an ex parte order under this section does not prevent the issuance of a criminal warrant.

SECTION 5. Effective date: upon passage or September 1, 2009.