

AN ACT

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.

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

SECTION 1. Subsection (a), Section 201.1041, Family Code, is amended to read as follows:

(a) 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, 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, shall 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. Subsection (a), Section 201.2041, Family Code, is amended to read as follows:

(a) 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, 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.

SECTION 3. Section 261.302, Family Code, is amended by

1 adding Subsection (g) to read as follows:

2 (g) The department, without filing suit, may seek a court  
3 order in aid of an investigation under Section 261.303.

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

8 (a) A person may not interfere with an investigation of a  
9 report of child abuse or neglect conducted by the department or  
10 designated agency, and a court may render an order to assist the  
11 department in an investigation under this subchapter.

12 (b) If admission to the home, school, or any place where the  
13 child may be cannot be obtained, or if consent to transport a child  
14 for purposes relating to an interview or investigation cannot be  
15 obtained, then, on presentation of an application supported by an  
16 affidavit described by Subsection (c-2) that is executed by an  
17 investigator or authorized representative of the department, [~~for~~  
18 good cause shown] the court having family law jurisdiction,  
19 including any associate judge designated by the court, may, on  
20 finding that the affidavit is sufficient and without prior notice  
21 or a hearing, [~~shall~~] order the parent, the person responsible for  
22 the care of the children, or the person in charge of any place where  
23 the child may be to allow entrance, transport of the child, or both  
24 entrance and transport for the interview, examination, and  
25 investigation.

26 (c) If a parent or person responsible for the child's care  
27 does not consent to release of the child's prior medical,

1 psychological, or psychiatric records or to a medical,  
2 psychological, or psychiatric examination of the child that is  
3 requested by the department or designated agency, then, on  
4 presentation of an application supported by an affidavit described  
5 by Subsection (c-2) that is executed by an investigator or  
6 authorized representative of the department, the court having  
7 family law jurisdiction, including any associate judge designated  
8 by the court, may, on finding that the affidavit is sufficient and  
9 without prior notice or a hearing [~~shall, for good cause shown~~],  
10 order the records to be released or the examination to be made at  
11 the times and places designated by the court.

12 (c-1) If a person having possession of records relating to a  
13 child that are relevant to an investigation does not consent to the  
14 release of the records on the request of the department or  
15 designated agency, then, on presentation of an application  
16 supported by an affidavit described by Subsection (c-2) that is  
17 executed by an investigator or authorized representative of the  
18 department, the court having family law jurisdiction, including any  
19 associate judge designated by the court, may, on finding that the  
20 affidavit is sufficient and without prior notice or a hearing,  
21 order the records to be released at the time and place designated by  
22 the court.

23 (c-2) An application filed under this section must be  
24 accompanied by an affidavit executed by an investigator or  
25 authorized representative of the department that states facts  
26 sufficient to lead a person of ordinary prudence and caution to  
27 believe that:

1           (1) based on information available, a child's physical  
2 or mental health or welfare has been or may be adversely affected by  
3 abuse or neglect;

4           (2) the requested order is necessary to aid in the  
5 investigation; and

6           (3) there is a fair probability that allegations of  
7 abuse or neglect will be sustained if the order is issued and  
8 executed.

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

12           (f) A court may designate an associate judge to render an  
13 order in aid of an investigation under this section. An order  
14 rendered by an associate judge is immediately effective without the  
15 ratification or signature of the court making the designation.

16           (g) As soon as practicable after executing the order or  
17 attempting to execute the order, as applicable, the department  
18 shall file with the clerk of the court that rendered the order a  
19 written report stating:

20           (1) the facts surrounding the execution of the order,  
21 including the date and time the order was executed and the name of  
22 the investigator or authorized representative executing the order;  
23 or

24           (2) the reasons why the department was unable to  
25 execute the order.

26           (h) A court issuing an order in aid of an investigation  
27 under this section shall keep a record of all the proceedings before

1 the court under this subchapter, including a report filed with the  
2 court under Subsection (g). The record of proceedings, including  
3 any application and supporting affidavit presented to the court and  
4 any report filed with the court under Subsection (g), is  
5 confidential and may only be disclosed as provided by Subsection  
6 (i) or Section 261.201.

7 (i) If the department files a suit under Chapter 262, the  
8 department shall include with its original petition a copy of the  
9 record of all the proceedings before the court under this  
10 subchapter, including an application and supporting affidavit for  
11 an order under this section and any report relating to an order in  
12 aid of an investigation.

13 (j) As soon as practicable after the department obtains  
14 access to records of a child under an order in aid of an  
15 investigation, the department shall notify the child's parents or  
16 another person with legal custody of the child that the department  
17 has obtained the records.

18 (k) Access to a confidential record under this subchapter  
19 does not constitute a waiver of confidentiality.

20 (l) This section does not prevent a court from requiring  
21 notice and a hearing before issuance of an order in aid of an  
22 investigation under this section if the court determines that:

23 (1) there is no immediate risk to the safety of the  
24 child; and

25 (2) notice and a hearing are required to determine  
26 whether the requested access to persons, records, or places or  
27 transport of the child is necessary to aid in the investigation.

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

3        SECTION 5. This Act takes effect immediately if it receives  
4 a vote of two-thirds of all the members elected to each house, as  
5 provided by Section 39, Article III, Texas Constitution. If this  
6 Act does not receive the vote necessary for immediate effect, this  
7 Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1440 passed the Senate on April 16, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 30, 2009, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1440 passed the House, with amendment, on May 27, 2009, by the following vote: Yeas 148, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor