

## **BILL ANALYSIS**

Senate Research Center

H.B. 730  
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Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Over the years, it has become evident that there is a lack of knowledge surrounding the rights of a parent or caregiver under Department of Family and Protective Services (DFPS) investigation. There is also a lack of accountability that prevents DFPS from conducting investigations with greater diligence. H.B. 730 seeks to revise some of the practices that occur in the time between DFPS's initial encounter with a family and the removal of a child by adding required notifications of parent or caretaker rights, fixing investigation standards, revising ex parte hearing stipulations, and putting in place accountability measures to ensure the greatest level of transparency and diligence is afforded to families under investigation. This legislation aims to fix the hidden foster care system.

H.B. 730 amends current law relating to policies and procedures regarding certain suits affecting the parent-child relationship, investigations by the Department of Family and Protective Services, and parental child safety placements.

### **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 261.303, Family Code, by amending Subsections (b) and (c) and adding Subsections (f), (g), and (h), as follows:

(b) Requires the court having family law jurisdiction, if admission to the home, school, or any place where the child may be cannot be obtained, and if the court has probable cause to believe that admission is necessary to protect the child from abuse or neglect, to then, rather than then for good cause shown, 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) Requires the court having family law jurisdiction, 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 the Department of Family and Protective Services (DFPS), and if the court has probable cause to believe that releasing the records or conducting an examination of the child is necessary to protect the child from abuse or neglect, to then, rather than then 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.

(f) Prohibits a hearing for an order under Section 261.303 (Interference With Investigation; Court Order) from being ex parte unless the court has probable cause to believe there is no time, consistent with the physical health or safety of the child, for a full hearing.

(g) Requires that a court order described by Subsection (b) or (c) include the court's findings regarding the sufficiency of evidence supporting the order.

(h) Requires the court, on request of a party to the suit, to provide a copy of an order rendered under this section to the party.

SECTION 2. Amends Section 261.307, Family Code, as follows:

Sec. 261.307. INFORMATION RELATING TO INVESTIGATION PROCEDURE AND CHILD PLACEMENT RESOURCES. (a) Requires DFPS, after, rather than as soon as possible after, initiating an investigation of a parent or other person having legal custody of a child, to, upon first contact with the parent or with the alleged perpetrator, provide to the person:

(1) a written summary that:

(A)-(B) makes no changes to these paragraphs; and

(C) contains certain information, including DFPS' procedures for conducting an investigation of alleged child abuse or neglect, including an explanation that any statement or admission made by the person to anyone is authorized to be used against the person in a criminal case, as a basis to remove the child who is the subject of the investigation or any other child from the person's care, custody, and control either temporarily or permanently, or as a basis to terminate the person's relationship with the child who is the subject of the investigation or any other child; the rights listed under Subdivision (2); and the known allegations DFPS is investigating. Makes a nonsubstantive change;

(2) a verbal notification of the right to:

(A) not speak with any agent of DFPS without legal counsel present;

(B) receive assistance from an attorney;

(C) have a court-appointed attorney if:

(i) the person is indigent;

(ii) the person is the parent of the child; and

(iii) DFPS seeks a court order in a suit filed under Section 262.101 (Filing Petition Before Taking Possession of Child) or 262.105 (Filing Petition After Taking Possession of Child in Emergency) or a court order requiring the person to participate in services under Section 264.203 (Required Participation);

(D) record any interaction or interview subject to the understanding that the recording is authorized to be subject to disclosure to DFPS, law enforcement, or another party under a court order;

(E) refuse to allow the investigator to enter the home or interview the child without a court order;

(F) have legal counsel present before allowing the investigator to enter the home or interview the child;

(G) withhold consent to the release of any medical or mental health records;

(H) withhold consent to any medical or psychological examination of the child;

(I) refuse to submit to a drug test; and

(J) consult with legal counsel prior to agreeing to any proposed voluntary safety plan; and

(3)-(4) redesignates existing Subdivisions (2) and (3) as Subdivisions (3) and (4).

(b) Makes a conforming change to this subsection.

(c) Requires the DFPS investigator to document that the investigator provided the verbal notification required by Subsection (a)(2).

(d) Requires DFPS to adopt a form for the purpose of verifying that the parent or other person having legal custody of the child received the verbal notification and written summary required by this section. Requires DFPS to provide a true and correct copy of the signed form to the person who is the subject of the investigation or that person's attorney, if represented by an attorney.

(e) Provides that any information obtained from the person, and any other information that would not have been discovered without that information, if a person who is the subject of an investigation does not receive the verbal notification and written summary required by this section, is not admissible for use against the person in any civil proceeding.

SECTION 3. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.3081, as follows:

Sec. 261.3081. NOTICE REGARDING CHANGES MADE BY DEPARTMENT TO INVESTIGATION REPORT. Requires DFPS to notify the following interested parties of any edits or corrections, other than edits or corrections to remedy spelling or grammatical errors, DFPS makes to the written report prepared by DFPS under Section 261.308 (Submission of Investigation Report):

(1) the child's parent;

(2) the attorney for the child's parent if represented by an attorney;

(3) an attorney ad litem for the child appointed under Chapter 107 (Special Appointments, Child Custody Evaluations, and Adoption Evaluations);

(4) a guardian ad litem for the child appointed under Chapter 107, including a volunteer advocate; and

(5) any other person the court determines has an interest in the child's welfare.

SECTION 4. Reenacts Section 262.206, Family Code, and amends it as follows:

Sec. 262.206. New heading: EX PARTE HEARINGS. (a) Creates this subsection from existing text.

(b) Requires a court that holds an ex parte hearing authorized by Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child)

to prepare and keep a record of the hearing in the form of an audio or video recording or a court reporter transcription.

(c) Requires the court, on request of a party to the suit, to provide a copy of the record of an ex parte hearing to the party.

(d) Requires DFPS to provide notice of an ex parte hearing authorized by this chapter if DFPS has received notice that a parent who is a party is represented by an attorney.

SECTION 5. Amends Sections 264.203(e) and (n), Family Code, as follows:

(e) Authorizes the court, in a suit filed under this section, to render a temporary restraining order as provided by Section 105.001 (Temporary Orders Before Final Order), except that the court is prohibited from issuing an order that places the child:

(1) outside of the child's home; or

(2) in the conservatorship of DFPS.

(n) Requires the court, if the court renders an order granting the petition, to:

(1) makes no changes to this subdivision;

(2) make appropriate temporary orders under Chapter 105 (Settings, Hearings, and Orders) necessary to ensure the safety of the child, except that the court is prohibited from issuing a temporary order that places the child:

(A) outside of the child's home; or

(B) in the conservatorship of DFPS; and

(3) makes no changes to this subdivision.

SECTION 6. Amends Subchapter C, Chapter 264, Family Code, by adding Section 264.2032, as follows:

Sec. 264.2032. REPORT ON COURT-ORDERED PARTICIPATION IN SERVICES. Requires DFPS to report the number of cases in which a court under Section 264.203 orders the following persons with respect to a child who is placed with a caregiver under a parental child safety placement under Subchapter L (Parental Child Safety Placements) to participate in services:

(1) the child's parent;

(2) the child's managing conservator;

(3) the child's guardian; or

(4) another member of the child's household.

SECTION 7. Amends Section 264.901(2), Family Code, to redefine "parental child safety placement."

SECTION 8. Amends Section 264.902, Family Code, by amending Subsection (a) and adding Subsections (e), (f), (g), (h), (i), and (j), as follows:

(a) Requires that a parental child safety placement agreement include terms that clearly state certain information, including, subject to Subsection (f), the date on which the

agreement will terminate unless terminated sooner or extended to a subsequent date as provided under DFPS policy.

(e) Requires DFPS, before a parent or other person making a parental child safety placement and the caregiver enter into a parental child safety placement agreement, to notify each person of the person's right to consult with an attorney and provide the person with a reasonable time in which to do so.

(f) Provides that an initial parental child safety placement agreement automatically terminates on the earlier of the 30th day after the date:

(1) the agreement is signed; or

(2) the child is placed with the caregiver.

(g) Authorizes DFPS, on the expiration of a parental child safety placement agreement, to for good cause enter into not more than two additional parental child safety placement agreements for the child. Requires DFPS, on entering an additional parental child safety placement agreement under this subsection, to:

(1) reevaluate the terms and conditions of the original agreement; and

(2) notify the parents of their right to:

(A) refuse to enter into the agreement; and

(B) be represented by an attorney or a court-appointed attorney if:

(i) the parent is indigent; and

(ii) DFPS subsequently seeks a court order to require the parents to participate in services.

(h) Provides that an additional parental child safety placement agreement described by Subsection (g) automatically terminates on the 30th day after the date the agreement is signed.

(i) Prohibits DFPS, notwithstanding Subsections (g) and (h), from placing a child outside of the child's home under a parental child safety placement for longer than 90 calendar days unless the parental child safety placement agreement is signed by both the parent and the parent's attorney or a court otherwise renders an order regarding the placement under Chapter 262. Prohibits this subsection from being construed to affect the duration of an agreement between DFPS and the parent other than a parental child safety placement agreement.

(j) Requires that a parental child safety placement agreement include certain language. Sets forth the language required to be included on the child safety placement agreement.

SECTION 9. Amends Subchapter L, Chapter 264, Family Code, by adding Section 264.907, as follows:

Sec. 264.907. INCLUSIONS IN REPORTS OF PARENTAL CHILD SAFETY PLACEMENTS. Requires DFPS to, where appropriate:

(1) include children who are placed with a caregiver under a parental child safety placement agreement in any report, including reports submitted to the United States Department of Health and Human Services or another federal agency, in which DFPS is required to report the number of children in the child protective services system who are removed from the children's homes; and

(2) report the information described by Subdivision (1) separately from information regarding the number of children removed under a suit filed under Section 262.101 or 262.105.

SECTION 10. (a) Makes application of Section 261.303, Family Code, as amended by this Act, prospective.

(b) Makes application of Section 261.307, Family Code, as amended by this Act, prospective.

(c) Makes application of Section 262.206, Family Code, as amended by this Act, prospective.

(d) Makes application of Section 264.902, Family Code, as amended by this Act, prospective.

SECTION 11. Effective date: September 1, 2023.