

BILL ANALYSIS

C.S.H.B. 1086
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Courts are tasked with making important decisions concerning families in child protection cases. During investigations of child abuse and neglect, state investigators will often ask for entrance to a home or school, access to a child for interviewing, and for the opportunity to examine a child's health records. If a parent refuses or argues that this is not necessary, the Department of Family and Protective Services (DFPS) may ask a judge to enter an order to aid the investigation and require that entrance be allowed. Unfortunately, these orders are often made after an ex parte hearing that has only DFPS swearing an affidavit and provides no opportunity for parents to argue their side. Judges should not be making these important decisions unless they have all the information from each side involved. By preventing these ex parte hearings from taking place unless absolutely necessary, and by requiring a record of those hearings, C.S.H.B. 1086 seeks to provide due process for the families and children involved.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1086 amends the Family Code to revise and set out provisions relating to the policies and procedures for certain investigations by the Department of Family and Protective Services (DFPS) and certain suits affecting the parent-child relationship.

Orders in Aid of Investigation

C.S.H.B. 1086 revises the provision requiring the court having family law jurisdiction, during an investigation of a report of child abuse or neglect conducted by DFPS in which DFPS cannot obtain admission to the child's home, school, or any place where the child may be, to order the parent, 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 as follows:

- replaces the requirement for the court to issue such an order with an authorization for the court to do so;
- changes the requisite evidentiary standard that triggers the applicability of the provision from for good cause shown to the court having probable cause to believe that the order is necessary due to an immediate risk to the child's safety;
- limits the examinations that may be ordered to only visual examinations; and

- allows for judicial discretion by specifying that entrance may be allowed under the order for an interview, an applicable examination, or an investigation, rather than the required order allowing entrance for all three, as specified by existing law.

The bill prohibits a court from issuing such an order unless the court is presented with facts sufficient to satisfy the court that there is probable cause to believe that the order is necessary due to an immediate risk to the child's safety and requires a separate sworn affidavit setting forth substantial facts establishing probable cause for admission to a location under such an order and for what purpose the admission is necessary to be filed for each location for which admission is requested under the order. The bill prohibits the hearing for such an order from being ex parte unless the court has probable cause to believe that an immediate risk to the child's physical health or safety makes it impracticable to hold a full hearing. The bill requires a court holding an ex parte hearing to prepare and keep a record of the hearing in the form of an audio recording or court reporter transcription, to maintain a copy of any electronic communication that occurred in place of an in-person hearing, and to provide a copy of the record to a party to the suit on the party's request. These provisions apply only to an order rendered on or after the bill's effective date.

Initial Hearing After Taking Possession of a Child Without a Court Order

C.S.H.B. 1086 revises the provision authorizing the initial hearing held by a court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity to be an ex parte hearing and authorizing proof to be by sworn petition or affidavit if a full adversary hearing is not practicable by specifying that this is the only circumstance under which the initial hearing may be ex parte and proof may be sworn in such a manner. The bill requires a court holding an ex parte hearing to prepare and keep a record of the hearing in the form of an audio or video recording or a court reporter transcription, to maintain a copy of any electronic communication that occurred in place of an in-person hearing, and to provide a copy of the recording to a party to the suit on the party's request. These provisions apply only to an ex parte hearing held on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1086 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Orders in Aid of Investigation

The substitute replaces the requirement for the court to enter an order to aid in a DFPS investigation if the requisite evidentiary standard is met with an authorization for the court to enter such an order, whereas the introduced maintained that requirement. While both the introduced and the substitute increase the requisite evidentiary standard from good cause shown to probable cause, the introduced required probable cause to believe that the order is necessary to protect the child from abuse or neglect, whereas in the substitute the standard is set at probable cause to believe that the order is necessary due to an immediate risk to the child's safety. The substitute also includes provisions that were not in the introduced that do the following:

- limit the examinations that may be ordered to only visual examinations; and
- allow for judicial discretion by specifying that entrance may be allowed under the order for an interview, an examination, or an investigation, rather than for all three as specified by existing law.

The substitute includes provisions that were not in the introduced prohibiting the court from issuing such an order unless the court is presented with sufficient facts to satisfy the court that there is probable cause to believe the order is necessary due to an immediate risk to the child's safety and requiring that a separate sworn affidavit relating to those facts and purpose for admission be filed for each location for which admission is requested.

The substitute gives a court the option to keep the required record of an ex parte hearing for the order in the form of an audio recording or a court reporter transcription, whereas the introduced allowed only for the record of the hearing to be an audio recording. The substitute includes a requirement absent from the introduced for the court to maintain a copy of any electronic communication that occurred in place of in-person hearing.

Initial Hearing After Taking Possession of a Child Without a Court Order

Whereas the introduced included provisions solely relating to orders in aid of an investigation, the substitute includes those provisions but also includes provisions absent from the introduced relating to the initial hearing after a child has been taken into possession without a court order.