

By: Watson, Uresti

S.B. No. 1064

A BILL TO BE ENTITLED

AN ACT

relating to the investigation of child abuse or neglect.

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

SECTION 1. Section 261.302, Family Code, is amended by adding Subsection (g) to read as follows:

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

SECTION 2. Section 261.303, Family Code, is amended to read as follows:

Sec. 261.303. INTERFERENCE WITH INVESTIGATION; COURT ORDER. (a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department or designated agency, and a court may enforce the right of the department to conduct an investigation under this subchapter.

(b) 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 affidavit described by Subsection (e) that is executed by an investigator or authorized representative of the department ~~[for good cause shown]~~ the court having family law jurisdiction, including any associate judge designated by the court, shall without prior notice or a hearing order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may

1 be to allow entrance, transport of the child, or both entrance and
2 transport for the interview, examination, and investigation.

3 (c) If a parent or person responsible for the child's care
4 does not consent to release of the child's prior medical,
5 psychological, or psychiatric records or to a medical,
6 psychological, or psychiatric examination of the child that is
7 requested by the department or designated agency, then on
8 presentation of an affidavit described by Subsection (e) that is
9 executed by an investigator or authorized representative of the
10 department the court having family law jurisdiction, including any
11 associate judge designated by the court, shall without prior notice
12 or a hearing~~[, for good cause shown,]~~ order the records to be
13 released or the examination to be made at the times and places
14 designated by the court.

15 (d) If a person, agency, or entity having possession of
16 records relating to a child that are relevant to an investigation
17 does not consent to the release of the records on the request of the
18 department or designated agency, then on presentation of an
19 affidavit described by Subsection (e) that is executed by an
20 investigator or authorized representative of the department the
21 court having family law jurisdiction, including any associate judge
22 designated by the court, shall without prior notice or a hearing
23 order the records to be released at the time and place designated by
24 the court.

25 (e) An affidavit required under Subsection (b), (c), or (d)
26 must state facts sufficient to lead a person of ordinary prudence
27 and caution to 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; and

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

6 (f) An affidavit used to obtain a court order in aid of
7 investigation under this section is not a pleading, and may not be
8 deemed a pleading, for purposes of the Texas Rules of Civil
9 Procedure.

10 (g) A person, including a medical facility, that makes a
11 report under Subchapter B shall release to the department or
12 designated agency, as part of the required report under Section
13 261.103, records that directly relate to the suspected abuse or
14 neglect without requiring parental consent or a court order. If a
15 child is transferred from a reporting medical facility to another
16 medical facility to treat the injury or condition that formed the
17 basis for the original report, the transferee medical facility
18 shall, at the department's request, release to the department
19 records relating to the injury or condition without requiring
20 parental consent or a court order.

21 (h) ~~[(e)]~~ A person, including a utility company, that has
22 confidential locating or identifying information regarding a
23 family that is the subject of an investigation under this chapter
24 shall release that information to the department on request. The
25 release of information to the department as required by this
26 subsection by a person, including a utility company, is not subject
27 to Section 552.352, Government Code, or any other law providing

1 liability for the release of confidential information.

2 (i) A court having family law jurisdiction may designate an
3 associate judge to issue an order in aid of investigation under this
4 section. An order issued by an associate judge is immediately
5 effective without the ratification or signature of the court making
6 the designation.

7 (j) An investigator or authorized representative of the
8 department executing an order issued under this section shall
9 promptly file with the court that issued the order a written report
10 stating whether the ordered access was granted, the interview was
11 conducted, or other action was taken in accordance with the order.

12 (k) A court issuing an order in aid of investigation under
13 this section shall keep a record of all the proceedings before the
14 court under this subchapter and shall certify and deliver the
15 record to the clerk of the court accompanied by all the original
16 papers relating to the proceedings, including a report filed with
17 the court under Subsection (j). The record of proceedings,
18 including any affidavit presented to the court and any report filed
19 with the court, is confidential under Section 261.201 and may only
20 be disclosed as provided by that section.

21 (l) If the department files a suit affecting the
22 parent-child relationship under Chapter 262, the department shall
23 include with its original petition any prelitigation affidavit,
24 order, or report relating to an order in aid of investigation issued
25 under this section.

26 (m) As soon as practicable after the department obtains
27 access to records of a child pursuant to an order issued under this

1 section, the department must notify the child's parents or other
2 person with legal custody of the child that the department has
3 obtained the records.

4 (n) Access to a confidential record under this subchapter
5 does not constitute a waiver of confidentiality.

6 (o) Nothing in this section shall prevent a court from
7 requiring notice and a hearing prior to issuance of an order under
8 this section if the court determines that notice and a hearing are
9 necessary to determine whether the requested access to persons,
10 records, or places is necessary to aid in the investigation.

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