

Court orders to aid in certain child abuse and neglect investigations

SB 1440 by Watson (Madden)

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DIGEST:

SB 1440 would have revised procedures to obtain and issue court orders used in investigations into allegations of child abuse or neglect when persons did not consent to access to a child or the release of records for an investigation after a request by Department of Family and Protective Services (DFPS).

The bill would have established requirements for affidavits newly required to accompany applications for certain court orders dealing with these investigations into child abuse and neglect. The affidavits and application procedures would have replaced current law requiring a showing of “good cause.” The affidavits would have had to be signed by an investigator or other DFPS representative and have facts sufficient to lead a person of ordinary prudence and caution to believe that:

- based on the available information, a child’s physical or mental health or welfare had been or could be affected adversely by abuse or neglect;
- the order was necessary to aid in the investigation; and
- there was a fair probability that allegations of abuse or neglect would be sustained if the order was issued and executed.

Upon the presentation of an application supported by the required affidavit, courts would have been authorized to order access to a child or the transport of a child for an interview, exam, or investigation after finding that the affidavit was sufficient.

The law would have specified that courts could issue these orders without prior notice or hearing. The law also would have specified that it did not prevent courts from requiring notice and a hearing before issuing an order to aid in an investigation if the court determined that there was no immediate risk to the safety of the child and that notice and hearing were required to determine whether the access to persons, records, or places or transport of a child was necessary to aid in the investigation.

The bill also would have specified that the signature of a referring court judge in certain child support and child protection cases was not required on a proposed order of an associate judge in situations in which the referring court was not required to ratify the proposed order.

GOVERNOR’S REASON FOR VETO:

“As a result of *Gates v. Texas Department of Protective and Regulatory Services*, Senate Bill No. 1440 would establish guidelines for Texas Department of Family and Protective Services (DFPS) caseworkers to follow when making entry and transport-for-interview decisions in alleged child abuse and neglect cases. The court’s decision in *Gates* is extremely narrow in its articulation of the standards that must be met for

transporting a child to conduct an interview. The decision also creates uncertainty about how court orders allowing such transport are to be obtained by DFPS under existing law. This court-created uncertainty must be addressed. Senate Bill No. 1440, however, overreaches and may not give due consideration to the Fourth Amendment rights of a parent or guardian.

“DFPS is charged with protecting the unprotected, and all parties involved benefit when procedures are clear and easily understood. Texas law should provide a clearly delineated investigative process that not only supports the rights of parents and guardians, but also provides DFPS with the proper authority and flexibility to protect the most vulnerable Texans.

“I am directing DFPS, through its parental advisory committee, to study the effect of the *Gates* decision on the ability of the department to appropriately enter a residence and, if necessary for the protection of the child, to transport the child for interviews in a neutral location. I am also directing DFPS, through its parental advisory committee, to develop and recommend statewide procedures to follow when seeking court orders to aid investigations, while protecting the rights of parents and families.”

RESPONSE:

Sen. Kirk Watson, the bill’s author, said: “SB 1440 would have improved our ability to protect Texas’ most vulnerable citizens and enabled us to fulfill our moral obligation to help those who cannot help themselves. It is troubling and wrong that Governor Perry has chosen to block it from becoming law.

“This bill includes an amendment, originally filed as SB 1064, that would have secured the rights of parents and families and ensured strong, uniform judicial oversight of a process that is at times tragically necessary to keep our children safe. The bills were joined only because SB 1064 was threatened by delays in the House of Representatives.

“Let’s be clear — both pieces of legislation were heard in the House and Senate and approved unanimously at every step. Both the bill and the amendment had the support of a remarkable spectrum of children’s advocates, state agency officials, and legislators from both parties.

“SB 1440 would not have granted Child Protective Services greater authority, would not have eliminated parental rights, and the legislation would not have removed due process or ignored the United States Constitution; indeed, it would have ensured Texas law conformed to it.

“Opposition to this bill is based on misunderstandings and misinterpretations. Unfortunately, Governor Perry listened to bad advice, ignored sound, just policy and chose to veto a bill that would have helped protect the children of Texas from abuse and neglect.”

Rep. Jerry Madden, the House sponsor, said: “I was the House sponsor of SB 1440. SB 1440 as passed by the Senate was certainly non-controversial. It provided clarification to the Family Code that the signature of the judge of a referring court is not required on a child support or child protection associate judge’s proposed order or judgment in order to become the order of the referring court. On the House floor, the language of SB 1064 was added into the bill as a Local and Consent amendment which significantly altered the content of SB 1440. This totally different subject matter created a heightened profile, and it has turned out to not be the non-controversial amendment which I expected. SB 1064 had been scheduled on the House Calendar, and the House Research Organization report indicated it had no known opposition. I was led to believe that SB 1064 had no opposition in the House Human Services Committee hearing, a point that has been subsequently disputed. SB 1440, which now is essentially SB 1064, portends a significant shift in policy. The areas it addresses indeed require attention. The ideas being advocated appear to need more general debate and scrutiny.

“I fully believe that families as well as children need to be protected, and agree that the Department of Family and Protective Services needs certain capabilities to properly perform its mission without unduly interfering with homes and parental rights. The subsequent discussions on the amended SB 1440 raise concerns in my mind that these factors may need additional careful evaluation.

“SB 2080 by Uresti proposes a task force be formed to evaluate ways to reduce the incidence of child abuse in Texas. I would suggest that when this bill is put into effect that someone from the Texas Home School Coalition be appointed to that body. I also volunteer my services to work with all sides in finding common ground by taking SB 1440 and developing a consensus recommendation to insure the rights of families and vulnerable children are both protected. Lacking the time to initiate a plan to work out the differences between the various stakeholders and parties presently sparring over SB 1440, I would recommend you reject it at this point in time.

“I am persuaded a proper balance of interests and just outcomes can be reached if the necessary investment of time and effort are contributed to the endeavor. I have talked with many people on both sides of this issue, and believe they are all

operating in good faith. I expect that between now and next session, by working with my legislative colleagues and all the interested parties which were involved in developing this bill, the prospects for buy-in from those who now may be debating over this issue can be resolved.”

NOTES:

SB 1440 passed the House on the May 27 Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

The portion of SB 1440 dealing with the investigations into child abuse and neglect allegations was in SB 1064 by Watson. The HRO analysis of SB 1064 appeared in Part Two of the May 23 *Daily Floor Report*.