

- SUBJECT:** Consolidating the procedures for removing children from a home
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 8 ayes — Raymond, Frank, Keough, Miller, Minjarez, Rose, Swanson, Wu
- 0 nays
- 1 absent — Klick
- WITNESSES:** For — (*Registered, but did not testify:* Adriana Kohler, Texans Care For Children; Andrew Homer, Texas CASA; Patricia Hogue, Texas Lawyers for Children; Lee Nichols, TexProtects; James Thurston, United Ways of Texas; Knox Kimberly, Upbring; Virginia Parks)
- Against — Johana Scot, Parent Guidance Center; Cecilia Wood, Texas Home School Coalition
- On — Tina Amberboy, Supreme Court Children's Commission; (*Registered, but did not testify:* Elizabeth "Liz" Kromrei, Department of Family and Protective Services (DFPS))
- BACKGROUND:** Family Code, ch. 262 governs the procedures for suits by a government agency to remove children from their homes. Emergency removals involve taking a child in immediate danger away from a home, with or without a court order, while non-emergency removals involve taking a child only after notice and an adversary hearing.
- Some observers have suggested that Family Code, ch. 262 could be organized or worded more clearly to avoid confusion among courts and practitioners about the procedures for removing a child from a home.
- DIGEST:** CSHB 3108 would revise Family Code, ch. 262 relating to the removal of a child from a potentially unsafe home and required court proceedings. It would consolidate procedures for emergency and non-emergency hearings

on removing children from a home and would specify the findings that would need to be made in certain circumstances.

Petition after emergency removal. In addition to the existing procedures, the bill would require a government entity that had removed a child without a court order to submit an affidavit stating:

- the reason for removal;
- that continuation of the child in the home would have been contrary to the child's welfare;
- that there was no time for a full adversary hearing prior to removal; and
- that reasonable efforts were made to prevent or eliminate the need for removal of the child.

Full adversary hearing. A full adversary hearing held prior to the removal of a child would have to occur within 30 days after a petition was filed. At the conclusion of the hearing, the court would have to issue a temporary restraining order if it found there was a continuing danger to the physical health or safety of a child caused by the person entitled to possession of a child and continuation of the child in the home would be contrary to the child's welfare. The court also would have to find that reasonable efforts were made to prevent or eliminate the need for removal of the child.

During a full adversary hearing held after emergency removal of a child, a court could consider if a person in the household had abused or neglected another child when determining whether there was a continuing danger to a child in a home.

Custody. Courts would be required to place a removed child with a noncustodial parent unless a court found:

- there was a danger to the physical health or safety of the child and placement would be contrary to the child's welfare;
- reasonable efforts were made to place the child with the

- noncustodial parent; and
- that it would not be in the child's best interest to be placed with the noncustodial parent.

Otherwise, the courts would be required to place a child with a relative, unless doing so would not be in the child's best interest.

Effective date. The bill would take effect September 1, 2017, and would apply only to a suit that was filed on or after that date.

NOTES: The companion bill, SB 999 by West, was approved by the Senate on May 1 and referred to the House Human Services Committee on May 8.