

- SUBJECT:** Requiring notification of the right to record a DFPS interview
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 9 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble, Rose, Shaheen
0 nays
- WITNESSES:** For — Andrew Brown, Texas Public Policy Foundation; Melissa Bright; Matthew Maldonado; (*Registered, but did not testify*: Megan Corser, Texas Home School Coalition)
Against — Judy Powell, Parent Guidance Center; Krista McIntire
On — Sophia Karimjee, Department of Family and Protective Services
- BACKGROUND:** Family Code ch. 261 requires the Department of Family and Protective Services (DFPS) to investigate a report of child abuse or neglect allegedly committed by a person responsible for a child's care or welfare. Sec. 261.302 specifies that an investigation may include certain interviews of the parties involved.
- DIGEST:** CSHB 135 would require that the Department of Family and Protective Services (DFPS), before interviewing an alleged perpetrator of child abuse or neglect, provide oral and written notification that:
- the person could create an audio recording of the interview but could not record the interview in any other manner; and
 - any audio recording made by the person could be subject to subpoena under a court order.
- DFPS would be required to document in its case files that it provided this notification. DFPS would be required to provide two copies of the written notice to be signed by the alleged perpetrator, with one provided to the alleged perpetrator and the other retained in the case file.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 135 would help provide accountability and transparency in Department of Family and Protective Services (DFPS) investigations by requiring that DFPS provide verbal and written notification to those accused of child abuse or neglect of their right to create an audio recording of an interview. Child welfare investigations can be traumatic for families, and they can result in one of the most severe penalties that our justice system can impose: the termination of parental rights. The notice required by the bill would ensure that families undergoing investigations were aware of their right to record a DFPS interview, a recording that could be used to dispute investigative findings if necessary.

Knowledge of the rights surrounding DFPS interviews has been shown to contribute to improved outcomes in child welfare cases, including preventing removals and reducing the length of stays in foster care. Currently, alleged perpetrators are allowed to record DFPS interviews, but many individuals are unaware of this. DFPS caseworkers are not required to record an interview of an adult, and this can lead to investigative findings based solely on a caseworker's observations and notes. Oral and written notification of the right to record would provide individuals who chose to record an interview with an unbiased piece of evidence that could be compared against a caseworker's findings.

CSHB 135 would require that DFPS inform an alleged perpetrator before an interview that an audio recording taken of the interview could be subject to subpoena under a court order, allowing the individual to decide whether to record and how to conduct themselves if they chose to do so. During a court proceeding, the discovery process already allows a party to subpoena supporting documents, so concerns about alleged perpetrators losing their ability to privately record investigative interviews are misplaced.

**CRITICS
SAY:**

CSHB 135 could deprive a parent or guardian accused of abuse or neglect of the ability to discreetly record a DFPS investigative interview by

requiring that DFPS inform an individual of the right to record the interview. People already are allowed to record DFPS investigative interviews, and requiring that DFPS inform the individual of this right would result in an overall awareness that a recording was being made.

In addition, if a parent or guardian had made a recording of an interview and inadvertently spoken in a way that could be construed as harmful to the parent's case, even if it did not relate to their parental duties, DFPS could issue a subpoena for every audio recording of the interview.