

BILL ANALYSIS

Senate Research Center

H.B. 2876
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Administrative law judges preside over administrative hearings that are held when an administrative or disciplinary action is pursued against a professional who is licensed or certified by the state. When a case involves allegations of child abuse or neglect, the Department of Family and Protective Services (DFPS) is often involved from the first stages of an investigation and may begin interviewing witnesses immediately after an allegation has been made. As a result, DFPS records may contain evidence relevant to assessing the credibility of a witness when allegations have been made against licensed professionals, such as teachers and nurses.

The Family Code currently authorizes judges to order the release of DFPS records, such as video-recorded interviews, in a civil or criminal court case. However, the law does not grant this authority to administrative law judges, as administrative law judges are not considered judicial judges for these purposes. Without such authorization, administrative law judges have no way of ordering the disclosure of DFPS records unless the action is filed in civil court for the sole purpose of obtaining an order for the release of the records. This creates an unnecessary burden and expense for the parties involved.

This bill authorizes an administrative law judge to order the release of DFPS records under the same conditions that normally apply to judicial judges. The bill makes review and determination requirements otherwise required for a court to disclose records applicable to the administrative law judge.

H.B. 2876 amends current law relating to the authority of an administrative law judge to order the release of certain information relating to a child abuse and neglect investigation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.201, Family Code, by adding Subsection (b-1), as follows:

(b-1) Authorizes an administrative law judge, on a motion of one of the parties in a contested case before the administrative law judge relating to the license or certification of a professional, as defined by Section 261.101(b) (relating to the requirement that a professional make a report of abuse or neglect under certain circumstances), or an educator, as defined by Section 5.001 (Definitions), Education Code, to order the disclosure of information that is confidential under this section that relates to the matter before the administrative law judge after a hearing for which notice is provided as required by Subsection (b)(2) (relating to authorization for the court to disclose certain information if a notice of hearing has been served on the investigating agency and all other interested parties) and making the review and determination required by Subsection (b)(3) (relating to authorization for the court to disclose certain information after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information meets certain requirements). Requires the Department of Family and Protective Services (DFPS), before DFPS is authorized to release information under this section, to edit the information to protect the confidentiality of the identity of any person who makes a report of abuse or neglect.

SECTION 2. Effective date: upon passage or September 1, 2009.