

CHAPTER 576

H.B. No. 538

AN ACT

relating to missing children.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 51.14(c), Family Code, is amended to read as follows:

(c) *Except as provided by this subsection, law-enforcement* [~~Law-enforcement~~] files and records concerning a child shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository. *If a child has been reported as missing by a parent, guardian, or*

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conservator of that child or a child has escaped from the custody of a juvenile detention facility, the Texas Youth Commission, or any other agency to which the child has been committed, any information or records concerning that child may be transferred to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

SECTION 2. Section 51.15(c), Family Code, is amended to read as follows:

(c) *Except as provided by this subsection, fingerprint [~~Fingerprint~~] and photograph files or records of children shall be kept separate from those of adults, and fingerprints or photographs known to be those of a child shall be maintained on a local basis only and not sent to a central state or federal depository. If a child has been reported as missing by a parent, guardian, or conservator of that child or a child has escaped from the custody of a juvenile detention facility, the Texas Youth Commission, or any other agency to which the child has been committed, the child's fingerprints and photograph may be sent to and indexed into the files of the Department of Public Safety and the Federal Bureau of Investigation to aid in the location and identification of the child.*

SECTION 3. Chapter 21, Education Code, is amended by adding Subchapter U to read as follows:

**SUBCHAPTER U. MISSING CHILD PREVENTION AND
IDENTIFICATION PROGRAMS**

Sec. 21.771. DEFINITIONS. In this subchapter:

(1) *"Child" and "minor" have the meanings assigned by Section 11.01(1), Family Code.*

(2) *"Missing child" means a child whose whereabouts are unknown to the legal custodian of the child and:*

(A) *the circumstances of whose absence indicate that the child did not voluntarily leave the care and control of the custodian and that the taking of the child was not authorized by law; or*

(B) *the child has engaged in conduct indicating a need for supervision under Section 51.03(b)(3), Family Code.*

Sec. 21.772. MISSING CHILD PREVENTION AND IDENTIFICATION PROGRAMS. (a) The board of trustees of a public school district or of a nonpublic school may participate in missing child prevention and identification programs, including fingerprinting and photographing as provided by this subchapter.

(b) *The board of trustees of a public school district may delegate responsibility for implementation of the program to the district's school administration or to the district's community education services administration.*

(c) *The chief administrative officer of each nonpublic primary or secondary school may participate in the programs and may contract with the regional service center in which the school is located for cooperative operation of all or any part of the program.*

(d) *A missing child prevention and identification program may include any of the following information:*

(1) *descriptions and statistics of currently missing children;*

(2) *why and how children become missing children and potential adverse consequences of becoming a missing child;*

(3) *effective alternatives for children who may be considering running away from the care, custody, or control of their parents or legal custodian;*

(4) *offenses under federal law that relate to missing children;*

(5) *offenses under state law that relate to missing children;*

(6) *state, local, federal, and private systems for locating and identifying missing children;*

(7) *law enforcement operations concerning missing children;*

(8) persons and organizations that provide information concerning missing children issues and matters;

(9) preventive measures and steps a child should take if the child becomes a missing child; and

(10) efforts that schools, parents, and the community can make to prevent abduction of children and to locate or identify missing children.

Sec. 21.773. PARTICIPATION NOT REQUIRED. No public school district or private school is required to participate in a missing child prevention and identification program, and it is the intent of the legislature that this chapter remain voluntary and not required of any school district. However, if a public school district or private school implements a missing child prevention and identification program, the program shall comply with the provisions of this subchapter.

Sec. 21.774. FINGERPRINTS OF CHILDREN. (a) A missing child prevention and identification program shall include a procedure for taking the fingerprints of each student registered in the school whose parent or legal custodian has consented to the fingerprinting. Fingerprints obtained under this section may be used only for the identification and location of a missing child.

(b) No child may be fingerprinted without the written consent of the child's parent or legal custodian. Before implementing a fingerprint procedure as part of a missing child prevention and identification program, a school must:

(1) distribute information to parents and children to encourage participation in the program; and

(2) request the written consent of the parent or legal custodian of each child registered in the school to take the child's fingerprints.

(c) The board of trustees of a school district or the chief administrative officer of a nonpublic school may establish a reasonable fee to cover the costs of fingerprinting not provided by volunteer assistance. The fee shall not exceed \$3 for each child fingerprinted. If the school charges a fee, the school may waive all or a portion of the costs of fingerprinting for children who qualify for free or reduced-price lunches in the national school lunch programs.

(d) A representative of a law enforcement agency of the county or the city where the school district is located or of the Department of Public Safety, or a person trained in fingerprinting technique by a law enforcement agency or the Department of Public Safety, shall make one complete set of fingerprints on a fingerprint card for each child participating in the program. If the school requests, the Department of Public Safety may provide fingerprint training to persons designated by the school.

(e) A fingerprint card shall include a description of the child, including the name, address, date and place of birth, color of eyes and hair, weight, and sex of the child.

(f) The fingerprint card and other materials developed under this subchapter shall be made part of the school's permanent student records.

(g) No state agency, law enforcement agency, organization, or other person may retain a copy of a child's fingerprints taken in this program.

Sec. 21.775. PHOTOGRAPHS OF CHILDREN. (a) A participating school shall retain a current photograph of each child registered in the school whose parent or legal custodian has consented. Photographs retained under this section may be used only for the identification and location of a missing child.

(b) A participating school shall, as a part of any contract with a photographer who makes school pictures, require the photographer to provide one wallet-sized photograph of each child photographed without regard to whether the parent or child purchases the school photographs.

(c) A participating school that does not arrange with a photographer to make pictures of students at the school may acquire photographs of registered students in any other manner, but the school may not require a child to have his picture taken or

to produce a picture of himself without the consent of the parent or other legal custodian of the child.

(d) A photograph of a child shall be retained by the participating school until the photograph is replaced by a subsequently made photograph or until the expiration of three years, whichever is the earlier.

(e) On the request of a parent or legal custodian of a missing child, or of a peace officer who is engaged in the investigation of a missing child, a participating school may give to the parent, legal custodian, or peace officer a copy of that child's photograph held by the school under this section. Except as provided by this subsection, a photograph held under this section may not be given to any person.

(f) A participating school may charge a fee for making and keeping records of photographs under this section. If the school charges a fee, the school may waive this fee for children who qualify for free or reduced-price lunches in the national school lunch programs.

Sec. 21.776. FINGERPRINTS AND PHOTOGRAPHS NOT USED AS EVIDENCE. A child's fingerprint card made under Section 21.774 of this code and a photograph of a child made or kept under Section 21.775 of this code may not be used as evidence in any criminal proceeding in which the child is a defendant or in any case under Title 3, Family Code, in which the child is alleged to have engaged in delinquent conduct or in conduct indicating a need for supervision.

Sec. 21.777. LIABILITY FOR NONPERFORMANCE. A person or entity is not liable in any suit for damages for negligent performance or nonperformance of any requirement of this subchapter.

Sec. 21.778. NEWLY ENROLLED STUDENTS. Newly enrolled students in a participating school may be fingerprinted and photographed at the beginning of the semester following their enrollment if their parents or legal custodians have consented as required by this subchapter.

Sec. 21.779. DESTRUCTION OF FINGERPRINTS AND PHOTOGRAPHS. The Central Education Agency shall adopt rules relating to the destruction of fingerprints and photographs made or kept under this subchapter.

Sec. 21.780. SCHOOL ANNUAL PHOTOGRAPHS. This subchapter does not apply to the use by a law enforcement agency for an official purpose of a photograph published in a school annual.

SECTION 4. (a) If private funding is available under Subsection (c) of this section, in school districts that are selected by the Central Education Agency and that consent to participate, the agency and the districts' community education services administration shall establish as a pilot program a missing child prevention and identification program developed under Subchapter U, Chapter 21, Education Code. The agency shall select districts that include at least one district with 5,000 or more students in average daily attendance, at least one district with at least 2,000 but less than 5,000 students in average daily attendance, and at least one district with less than 2,000 students in average daily attendance. No district is required to participate in the pilot program.

(b) Not later than January 31, 1989, the agency shall submit a report to the 71st Legislature that includes:

(1) an evaluation of the effectiveness of the program implemented in the districts selected under this section; and

(2) a recommendation concerning the implementation and content of voluntary missing child prevention and identification programs in school districts.

(c) The pilot programs established under this section, including the administrative costs of preparing the report, shall be financed by private donations made for that purpose to the agency or to a school district in which the pilot program is established. For the 1988-89 biennium, donations accepted by the agency for the establishment of a pilot program under this section are appropriated to the agency from the state treasury for the purposes of this section.

SECTION 5. This Act takes effect September 1, 1987, except that Sections 1 and 2 take effect immediately.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on April 30, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 538 on May 30, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 538 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 538 on June 1, 1987, by the following vote: Yeas 31, Nays 0.

Approved June 18, 1987.

Effective Sept. 1, 1987, except §§ 1 and 2 effective Aug. 31, 1987, 90 days after date of adjournment.