

By: Krause

H.B. No. 1190

A BILL TO BE ENTITLED

AN ACT

relating to the procedures required before an individual's name is added to the central child abuse or neglect registry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 261.002, Family Code, is amended by adding Subsections (a-1) and (a-2) and amending Subsection (b) to read as follows:

(a-1) Except as provided by Subsection (a-2), the department may not add to the central registry maintained under this section the name of an individual found by the department to have abused or neglected a child unless the department's finding is sustained by an administrative law judge at an administrative hearing before the State Office of Administrative Hearings under Section 261.0021.

(a-2) The department may add the name of an individual to the central registry maintained under this section without an administrative hearing under Section 261.0021 if in a civil, criminal, administrative, or juvenile proceeding in which the allegations of abuse or neglect are at issue, a court finds the individual abused or neglected a child.

(b) The [~~executive~~] commissioner shall adopt rules necessary to carry out this section. The rules shall:

(1) prohibit the department from making a finding of abuse or neglect against a person in a case in which the department

1 is named managing conservator of a child who has a severe emotional
2 disturbance only because the child's family is unable to obtain
3 mental health services for the child;

4 (2) establish guidelines for reviewing the records in
5 the registry and removing those records in which the department was
6 named managing conservator of a child who has a severe emotional
7 disturbance only because the child's family was unable to obtain
8 mental health services for the child;

9 (3) require the department to remove a person's name
10 from the central registry maintained under this section not later
11 than the 10th business day after the date the department receives
12 notice that a finding of abuse and neglect against the person is
13 overturned in:

14 (A) an administrative review or an appeal of the
15 review conducted under Section 261.309(c);

16 (B) a review or an appeal of the review conducted
17 by the office of consumer affairs of the department; or

18 (C) a hearing or an appeal conducted by the State
19 Office of Administrative Hearings; and

20 (4) require the department to update any relevant
21 department files to reflect an overturned finding of abuse or
22 neglect against a person not later than the 10th business day after
23 the date the finding is overturned in a review, hearing, or appeal
24 described by Subdivision (3).

25 SECTION 2. Subchapter A, Chapter 261, Family Code, is
26 amended by adding Sections 261.0021 and 261.0022 to read as
27 follows:

1 Sec. 261.0021. PROCEDURES FOR ADDING ALLEGED OFFENDERS TO
2 CENTRAL REGISTRY; ADMINISTRATIVE HEARING. (a) Not later than the
3 14th day after the date the department makes a finding that an
4 individual abused or neglected a child, the department shall:

5 (1) submit a request for a hearing to the State Office
6 of Administrative Hearings; and

7 (2) provide written notice to the individual that the
8 department intends to add the individual's name and information
9 regarding the reported case of abuse or neglect to the central
10 registry maintained under Section 261.002.

11 (b) The notice required by Subsection (a)(2) must include:

12 (1) a clear statement of the specific allegations that
13 will be added to the central registry, including:

14 (A) the name of the alleged victim;

15 (B) the injury or harm alleged to have resulted
16 from the abuse or neglect; and

17 (C) the date the report of abuse or neglect was
18 made to the department;

19 (2) the consequences of being listed in the central
20 registry, including any possible negative impact on the
21 individual's ability to obtain employment or certain licenses and
22 to have future contact with children, including any limitation on
23 volunteering or involvement in school activities;

24 (3) the length of the time the individual's name may be
25 included in the registry;

26 (4) a copy of the information that will be added to the
27 registry;

1 (5) confirmation that the department has requested a
2 hearing before the State Office of Administrative Hearings to
3 review the department's findings; and

4 (6) the contact information for the State Office of
5 Administrative Hearings.

6 (c) On receipt of a request for a hearing from the
7 department regarding its intention to list an alleged offender in
8 the central registry, the State Office of Administrative Hearings
9 shall contact the parties to schedule a date for the hearing. The
10 hearing shall be held not later than the 60th day after the date the
11 department issues its findings.

12 (d) The alleged offender has the right to be represented by
13 an attorney at the hearing. If the alleged offender is indigent the
14 State Office of Administrative Hearings shall appoint an attorney
15 to represent the alleged offender at the hearing.

16 (e) Before the hearing, the department shall provide the
17 alleged offender with the department's complete investigative file
18 and any exculpatory evidence the department possesses or controls.

19 (f) At the hearing, the alleged offender may:

20 (1) present sworn evidence, law, or rules related to
21 the allegations; and

22 (2) subpoena witnesses, cross-examine the
23 department's witnesses, introduce evidence, object to evidence
24 introduced by the department, and make an opening and a closing
25 argument.

26 (g) Not later than the 30th day after the date the hearing
27 concludes, the presiding administrative law judge shall enter an

1 order containing the judge's written findings of fact and
2 conclusions of law. The burden of proof is on the department to
3 establish by a preponderance of the evidence that the alleged
4 offender abused or neglected the child.

5 (h) If the presiding administrative law judge enters an
6 order under Subsection (g) that sustains the department's findings,
7 the department shall enter the alleged offender's information into
8 the central registry. The department shall maintain the information
9 in the registry for a period proportionate to the severity of the
10 offense. The department may not retain the information in the
11 registry after the 10th anniversary of the date the abuse or neglect
12 occurred.

13 (i) If the presiding administrative law judge enters an
14 order under Subsection (g) that does not sustain the department's
15 findings, the judge shall order the department to amend the
16 department's findings accordingly and the department may not enter
17 the allegations into the central registry.

18 (j) A hearing under this section is a contested case under
19 Chapter 2001, Government Code, and the administrative law judge's
20 decision is subject to judicial review as provided by that chapter.
21 The district court with jurisdiction over child protection cases in
22 the county in which the alleged abuse or neglect occurred has
23 jurisdiction to review the administrative law judge's decision. A
24 party may file a motion to transfer the judicial review case to a
25 district court with jurisdiction over child protection cases in
26 another county. The district court, for good cause shown, may grant
27 the motion to transfer.

1 (k) The department may not add an alleged offender to the
2 central registry or release information to any third party until
3 all appeals are either exhausted or waived.

4 (l) The Texas Rules of Civil Procedure apply to a proceeding
5 under this section.

6 Sec. 261.0022. PROCEDURES FOR REMOVING ALLEGED OFFENDER
7 FROM CENTRAL REGISTRY. (a) An individual listed in the central
8 registry maintained under Section 261.002 may request to have the
9 individual's name and information removed from the registry by
10 submitting a written request to the State Office of Administrative
11 Hearings accompanied by an affidavit sworn to by a person with
12 personal knowledge stating facts sufficient to show there is good
13 cause for a hearing on the issue of whether the individual abused or
14 neglected a child. Good cause for a hearing includes:

15 (1) newly discovered evidence that a substantiated
16 report of child abuse or neglect is inaccurate; or

17 (2) evidence that:

18 (A) the individual no longer poses a risk; and

19 (B) no significant public purpose is served by
20 continuing to list the individual in the registry.

21 (b) Except for the affidavit required by Subsection (a), a
22 written request to remove information from the central registry
23 submitted under this section may be in any form.

24 (c) Before a hearing is held under this section, the
25 department may remove from the central registry the name and
26 information of an individual listed in the registry.

27 (d) A hearing requested under this section shall be

1 conducted in the same manner as a hearing conducted under Section
2 261.0021.

3 (e) An individual who is listed in the central registry may
4 not request to have the information removed from the registry
5 before the second anniversary of the date the information is added
6 to the registry.

7 (e-1) Notwithstanding Subsection (e), an individual listed
8 in the central registry on September 1, 2021, may request to have
9 the individual's name and information removed from the registry as
10 provided by this section. This subsection expires September 1,
11 2023.

12 (f) An individual whose request to remove information from
13 the central registry under this section is denied may not make a
14 subsequent request to have the information removed from the
15 registry before the second anniversary of the date the request for
16 removal is denied.

17 (g) The Texas Rules of Civil Procedure apply to a proceeding
18 under this section.

19 SECTION 3. Section 261.103, Family Code, is amended by
20 adding Subsection (d) to read as follows:

21 (d) The department or other entity receiving a report of
22 abuse or neglect that is not substantiated in the manner described
23 by Section 261.002(a-2) or as provided by Section 261.0021 shall
24 maintain information relating to the report until the second
25 anniversary of the date the department or other entity receives the
26 report.

27 SECTION 4. The changes in law made by this Act by amending

1 Section 261.002, Family Code, and adding Section 261.0021, Family
2 Code, apply only to a finding that an individual abused or neglected
3 a child made by the Department of Family and Protective Services on
4 or after the effective date of this Act. A finding made by the
5 department before that date is governed by the law in effect on the
6 date the finding was made, and the former law is continued in effect
7 for that purpose.

8 SECTION 5. This Act takes effect September 1, 2021.