

By: West, Nelson

S.B. No. 1074

A BILL TO BE ENTITLED

AN ACT

1
2 relating to reports and investigations of abuse and neglect in
3 nursing facilities.

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

5 SECTION 1. Section 242.125, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 242.125. PROCESSING OF REPORTS. (a) A report of
8 abuse or neglect shall be made to the department or a local or state
9 law enforcement agency. A report made by an owner or employee of an
10 institution shall be made to the department and to the law
11 enforcement agency described by Section 242.135(a).

12 (b) Except as provided by Section 242.135, a [A] local or
13 state law enforcement agency that receives a report of abuse or
14 neglect shall refer the report to the department or the designated
15 agency.

16 SECTION 2. Section 242.126, Health and Safety Code, is
17 amended by amending Subsections (c), (e), and (g) and adding
18 Subsections (l), (m), and (n) to read as follows:

19 (c) The agency shall begin the investigation:

20 (1) within 24 hours of receipt of the report or other
21 allegation, if the report of abuse or neglect or other complaint
22 alleges that:

23 (A) a resident's health or safety is in imminent
24 danger;

1 (B) a resident has recently died because of
2 conduct alleged in the report of abuse or neglect or other
3 complaint; [~~or~~]

4 (C) a resident has been hospitalized or been
5 treated in an emergency room because of conduct alleged in the
6 report of abuse or neglect or other complaint;

7 (D) a resident has been a victim of any act or
8 attempted act described by Section 21.11, 22.011, or 22.021, Penal
9 Code; or

10 (E) a resident has suffered bodily injury, as
11 that term is defined by Section 1.07, Penal Code, because of conduct
12 alleged in the report of abuse or neglect or other complaint; or

13 (2) before the end of the next working day after the
14 date of receipt of the report of abuse or neglect or other
15 complaint, if the report or complaint alleges the existence of
16 circumstances that could result in abuse or neglect and that could
17 place a resident's health or safety in imminent danger.

18 (e) In investigating the report of abuse or neglect or other
19 complaint, the investigator for the investigating agency shall:

20 (1) make an unannounced visit to the institution to
21 determine the nature and cause of the alleged abuse or neglect of
22 the resident;

23 (2) interview each available witness, including the
24 resident that suffered the alleged abuse or neglect if the resident
25 is able to communicate or another resident or other witness
26 identified by any source as having personal knowledge relevant to
27 the report of abuse or neglect or other complaint;

1 (3) personally inspect any physical circumstance that
2 is relevant and material to the report of abuse or neglect or other
3 complaint and that may be objectively observed; [~~and~~]

4 (4) make a photographic record of any injury to a
5 resident, subject to Subsection (n); and

6 (5) write an investigation report that includes:

7 (A) the investigator's personal observations;

8 (B) a review of relevant documents and records;

9 (C) a summary of each witness statement,
10 including the statement of the resident that suffered the alleged
11 abuse or neglect and any other resident interviewed in the
12 investigation; and

13 (D) a statement of the factual basis for the
14 findings for each incident or problem alleged in the report or other
15 allegation.

16 (g) Not later than the 30th day after the date the
17 investigation is complete, the investigator shall prepare the
18 written report required by Subsection (e). The department shall
19 make the investigation report available to the public on request
20 after the date the department's letter of determination is
21 complete. The department shall delete from any copy made available
22 to the public:

23 (1) the name of:

24 (A) [~~(1)~~] any resident, unless the department
25 receives written authorization from a resident or the resident's
26 legal representative requesting the resident's name be left in the
27 report;

1 (B) [~~+2~~] the person making the report of abuse
2 or neglect or other complaint; and

3 (C) [~~+3~~] an individual interviewed in the
4 investigation; and

5 (2) photographs of any injury to the resident.

6 (1) Within 24 hours of receipt of a report of abuse or
7 neglect or other complaint described by Subsection (c)(1), the
8 department or designated agency shall report the report or
9 complaint to the law enforcement agency described by Section
10 242.135(a). The department or designated agency shall cooperate
11 with that law enforcement agency in the investigation of the report
12 or complaint as described by Section 242.135.

13 (m) The inability or unwillingness of a local law
14 enforcement agency to conduct a joint investigation under Section
15 242.135 does not constitute grounds to prevent or prohibit the
16 department from performing its duties under this chapter. The
17 department shall document any instance in which a law enforcement
18 agency is unable or unwilling to conduct a joint investigation
19 under Section 242.135.

20 (n) If the department determines that, before a
21 photographic record of an injury to a resident may be made under
22 Subsection (e), consent is required under state or federal law, the
23 investigator:

24 (1) shall seek to obtain any required consent; and

25 (2) may not make the photographic record unless the
26 consent is obtained.

27 SECTION 3. Section 242.127, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 242.127. CONFIDENTIALITY. A report, record, or
3 working paper used or developed in an investigation made under this
4 subchapter and the name, address, and phone number of any person
5 making a report under this subchapter are confidential and may be
6 disclosed only for purposes consistent with the rules adopted by
7 the board or the designated agency. The report, record, or working
8 paper and the name, address, and phone number of the person making
9 the report shall be disclosed to a law enforcement agency as
10 necessary to permit the law enforcement agency to investigate a
11 report of abuse or neglect or other complaint in accordance with
12 Section 242.135.

13 SECTION 4. Subchapter E, Chapter 242, Health and Safety
14 Code, is amended by adding Section 242.135 to read as follows:

15 Sec. 242.135. DUTIES OF LAW ENFORCEMENT; JOINT
16 INVESTIGATION. (a) A department or designated agency shall
17 investigate a report of abuse or neglect or other complaint
18 described by Section 242.126(c)(1) jointly with:

19 (1) the municipal law enforcement agency, if the
20 institution is located within the territorial boundaries of a
21 municipality; or

22 (2) the sheriff's department of the county in which the
23 institution is located, if the institution is not located within
24 the territorial boundaries of a municipality.

25 (b) The law enforcement agency described by Subsection (a)
26 shall acknowledge the report of abuse or neglect or other complaint
27 and begin the joint investigation required by this section within

1 24 hours of receipt of the report or complaint. The law enforcement
2 agency shall cooperate with the department or designated agency and
3 report to the department or designated agency the results of the
4 investigation.

5 (c) The requirement that the law enforcement agency and the
6 department or designated agency conduct a joint investigation under
7 this section does not require that a representative of each agency
8 be physically present during all phases of the investigation or
9 that each agency participate equally in each activity conducted in
10 the course of the investigation.

11 SECTION 5. Article 2.27, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 2.27. INVESTIGATION OF CERTAIN REPORTS ALLEGING
14 [~~CHILD~~] ABUSE. (a) On receipt of a report alleging serious
15 physical or sexual abuse of a child by a person responsible for the
16 care, custody, or welfare of the child, an investigator from the
17 appropriate local law enforcement agency shall investigate the
18 report jointly with the Department of Protective and Regulatory
19 Services or with the agency responsible for conducting an
20 investigation under Subchapter E, Chapter 261, Family Code.

21 (b) On receipt of a report of abuse or neglect or other
22 complaint of a resident of a nursing home, convalescent home, or
23 other related institution under Section 242.126(c)(1), Health and
24 Safety Code, the appropriate local law enforcement agency shall
25 investigate the report as required by Section 242.135, Health and
26 Safety Code.

27 SECTION 6. Not later than January 1, 2004, the Texas

1 Department of Human Services shall determine whether, before a
2 photographic record of an injury to a resident may be made under
3 Subsection (e), Section 242.126, Health and Safety Code, as amended
4 by this Act, consent is required under state or federal law and
5 shall adopt any rules necessary to implement any consent
6 requirement.

7 SECTION 7. This Act takes effect September 1, 2003.