

By: West, et al.

S.B. No. 1074

Substitute the following for S.B. No. 1074:

By: Wohlgemuth

C.S.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 relating to abuse or neglect or another complaint  
11 described by Section 242.126(c)(1) shall be made to the department  
12 and to the law enforcement agency described by Section 242.135(a).

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

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

20 (c) The agency shall begin the investigation:

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

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

1 danger;

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

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

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

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

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

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

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

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

1 the report of abuse or neglect or other complaint;

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

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

7 (5) write an investigation report that includes:

8 (A) the investigator's personal observations;

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

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

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

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

24 (1) the name of:

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

1 report;

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

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

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

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

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

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

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

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

1 SECTION 3. Section 242.127, Health and Safety Code, is  
2 amended to read as follows:

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

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

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

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

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

26 (b) The law enforcement agency described by Subsection (a)  
27 shall acknowledge the report of abuse or neglect or other complaint

1 and begin the joint investigation required by this section within  
2 24 hours of receipt of the report or complaint. The law enforcement  
3 agency shall cooperate with the department or designated agency and  
4 report to the department or designated agency the results of the  
5 investigation.

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

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

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

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

1           SECTION 6. Not later than January 1, 2004, the Texas  
2 Department of Human Services shall determine whether, before a  
3 photographic record of an injury to a resident may be made under  
4 Subsection (e), Section 242.126, Health and Safety Code, as amended  
5 by this Act, consent is required under state or federal law and  
6 shall adopt any rules necessary to implement any consent  
7 requirement.

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