

1-1 By: West S.B. No. 1074  
1-2 (In the Senate - Filed March 10, 2003; March 17, 2003, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 April 22, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 22, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1074 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to reports and investigations of abuse and neglect in  
1-11 nursing facilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 242.125, Health and Safety Code, is  
1-14 amended to read as follows:

1-15 Sec. 242.125. PROCESSING OF REPORTS. (a) A report of  
1-16 abuse or neglect shall be made to the department or a local or state  
1-17 law enforcement agency. A report made by an owner or employee of an  
1-18 institution shall be made to the department and to the law  
1-19 enforcement agency described by Section 242.135(a).

1-20 (b) Except as provided by Section 242.135, a [A] local or  
1-21 state law enforcement agency that receives a report of abuse or  
1-22 neglect shall refer the report to the department or the designated  
1-23 agency.

1-24 SECTION 2. Section 242.126, Health and Safety Code, is  
1-25 amended by amending Subsections (c), (e), and (g) and adding  
1-26 Subsections (l), (m), and (n) to read as follows:

1-27 (c) The agency shall begin the investigation:

1-28 (1) within 24 hours of receipt of the report or other  
1-29 allegation, if the report of abuse or neglect or other complaint  
1-30 alleges that:

1-31 (A) a resident's health or safety is in imminent  
1-32 danger;

1-33 (B) a resident has recently died because of  
1-34 conduct alleged in the report of abuse or neglect or other  
1-35 complaint; ~~or~~

1-36 (C) a resident has been hospitalized or been  
1-37 treated in an emergency room because of conduct alleged in the  
1-38 report of abuse or neglect or other complaint;

1-39 (D) a resident has been a victim of any act or  
1-40 attempted act described by Section 21.11, 22.011, or 22.021, Penal  
1-41 Code; or

1-42 (E) a resident has suffered bodily injury, as  
1-43 that term is defined by Section 1.07, Penal Code, because of conduct  
1-44 alleged in the report of abuse or neglect or other complaint; or

1-45 (2) before the end of the next working day after the  
1-46 date of receipt of the report of abuse or neglect or other  
1-47 complaint, if the report or complaint alleges the existence of  
1-48 circumstances that could result in abuse or neglect and that could  
1-49 place a resident's health or safety in imminent danger.

1-50 (e) In investigating the report of abuse or neglect or other  
1-51 complaint, the investigator for the investigating agency shall:

1-52 (1) make an unannounced visit to the institution to  
1-53 determine the nature and cause of the alleged abuse or neglect of  
1-54 the resident;

1-55 (2) interview each available witness, including the  
1-56 resident that suffered the alleged abuse or neglect if the resident  
1-57 is able to communicate or another resident or other witness  
1-58 identified by any source as having personal knowledge relevant to  
1-59 the report of abuse or neglect or other complaint;

1-60 (3) personally inspect any physical circumstance that  
1-61 is relevant and material to the report of abuse or neglect or other  
1-62 complaint and that may be objectively observed; ~~and~~

1-63 (4) make a photographic record of any injury to a

2-1 resident, subject to Subsection (n); and

2-2 (5) write an investigation report that includes:

2-3 (A) the investigator's personal observations;

2-4 (B) a review of relevant documents and records;

2-5 (C) a summary of each witness statement,

2-6 including the statement of the resident that suffered the alleged

2-7 abuse or neglect and any other resident interviewed in the

2-8 investigation; and

2-9 (D) a statement of the factual basis for the  
2-10 findings for each incident or problem alleged in the report or other  
2-11 allegation.

2-12 (g) Not later than the 30th day after the date the  
2-13 investigation is complete, the investigator shall prepare the  
2-14 written report required by Subsection (e). The department shall  
2-15 make the investigation report available to the public on request  
2-16 after the date the department's letter of determination is  
2-17 complete. The department shall delete from any copy made available  
2-18 to the public:

2-19 (1) the name of:

2-20 (A) [~~1~~] any resident, unless the department  
2-21 receives written authorization from a resident or the resident's  
2-22 legal representative requesting the resident's name be left in the  
2-23 report;

2-24 (B) [~~2~~] the person making the report of abuse  
2-25 or neglect or other complaint; and

2-26 (C) [~~3~~] an individual interviewed in the  
2-27 investigation; and

2-28 (2) photographs of any injury to the resident.

2-29 (1) Within 24 hours of receipt of a report of abuse or  
2-30 neglect or other complaint described by Subsection (c)(1), the  
2-31 department or designated agency shall report the report or  
2-32 complaint to the law enforcement agency described by Section  
2-33 242.135(a). The department or designated agency shall cooperate  
2-34 with that law enforcement agency in the investigation of the report  
2-35 or complaint as described by Section 242.135.

2-36 (m) The inability or unwillingness of a local law  
2-37 enforcement agency to conduct a joint investigation under Section  
2-38 242.135 does not constitute grounds to prevent or prohibit the  
2-39 department from performing its duties under this chapter. The  
2-40 department shall document any instance in which a law enforcement  
2-41 agency is unable or unwilling to conduct a joint investigation  
2-42 under Section 242.135.

2-43 (n) If the department determines that, before a  
2-44 photographic record of an injury to a resident may be made under  
2-45 Subsection (e), consent is required under state or federal law, the  
2-46 investigator:

2-47 (1) shall seek to obtain any required consent; and

2-48 (2) may not make the photographic record unless the  
2-49 consent is obtained.

2-50 SECTION 3. Section 242.127, Health and Safety Code, is  
2-51 amended to read as follows:

2-52 Sec. 242.127. CONFIDENTIALITY. A report, record, or  
2-53 working paper used or developed in an investigation made under this  
2-54 subchapter and the name, address, and phone number of any person  
2-55 making a report under this subchapter are confidential and may be  
2-56 disclosed only for purposes consistent with the rules adopted by  
2-57 the board or the designated agency. The report, record, or working  
2-58 paper and the name, address, and phone number of the person making  
2-59 the report shall be disclosed to a law enforcement agency as  
2-60 necessary to permit the law enforcement agency to investigate a  
2-61 report of abuse or neglect or other complaint in accordance with  
2-62 Section 242.135.

2-63 SECTION 4. Subchapter E, Chapter 242, Health and Safety  
2-64 Code, is amended by adding Section 242.135 to read as follows:

2-65 Sec. 242.135. DUTIES OF LAW ENFORCEMENT; JOINT  
2-66 INVESTIGATION. (a) A department or designated agency shall  
2-67 investigate a report of abuse or neglect or other complaint  
2-68 described by Section 242.126(c)(1) jointly with:

2-69 (1) the municipal law enforcement agency, if the

3-1 institution is located within the territorial boundaries of a  
3-2 municipality; or

3-3 (2) the sheriff's department of the county in which the  
3-4 institution is located, if the institution is not located within  
3-5 the territorial boundaries of a municipality.

3-6 (b) The law enforcement agency described by Subsection (a)  
3-7 shall acknowledge the report of abuse or neglect or other complaint  
3-8 and begin the joint investigation required by this section within  
3-9 24 hours of receipt of the report or complaint. The law enforcement  
3-10 agency shall cooperate with the department or designated agency and  
3-11 report to the department or designated agency the results of the  
3-12 investigation.

3-13 (c) The requirement that the law enforcement agency and the  
3-14 department or designated agency conduct a joint investigation under  
3-15 this section does not require that a representative of each agency  
3-16 be physically present during all phases of the investigation or  
3-17 that each agency participate equally in each activity conducted in  
3-18 the course of the investigation.

3-19 SECTION 5. Article 2.27, Code of Criminal Procedure, is  
3-20 amended to read as follows:

3-21 Art. 2.27. INVESTIGATION OF CERTAIN REPORTS ALLEGING  
3-22 [~~CHILD~~] ABUSE. (a) On receipt of a report alleging serious  
3-23 physical or sexual abuse of a child by a person responsible for the  
3-24 care, custody, or welfare of the child, an investigator from the  
3-25 appropriate local law enforcement agency shall investigate the  
3-26 report jointly with the Department of Protective and Regulatory  
3-27 Services or with the agency responsible for conducting an  
3-28 investigation under Subchapter E, Chapter 261, Family Code.

3-29 (b) On receipt of a report of abuse or neglect or other  
3-30 complaint of a resident of a nursing home, convalescent home, or  
3-31 other related institution under Section 242.126(c)(1), Health and  
3-32 Safety Code, the appropriate local law enforcement agency shall  
3-33 investigate the report as required by Section 242.135, Health and  
3-34 Safety Code.

3-35 SECTION 6. Not later than January 1, 2004, the Texas  
3-36 Department of Human Services shall determine whether, before a  
3-37 photographic record of an injury to a resident may be made under  
3-38 Subsection (e), Section 242.126, Health and Safety Code, as amended  
3-39 by this Act, consent is required under state or federal law and  
3-40 shall adopt any rules necessary to implement any consent  
3-41 requirement.

3-42 SECTION 7. This Act takes effect September 1, 2003.

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