

By: Nelson, et al.

S.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to protective services; providing penalties.

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

ARTICLE 1. CHILD PROTECTIVE SERVICES

SECTION 1.01. Section 54.211, Education Code, is amended to read as follows:

Sec. 54.211. EXEMPTIONS FOR STUDENTS IN FOSTER OR OTHER RESIDENTIAL CARE. (a) A student is exempt from the payment of tuition and fees authorized in this chapter if the student:

(1) was in foster care or other residential care under the conservatorship of the Department of Family and Protective [~~and Regulatory~~] Services on or after:

(A) the day preceding the student's 18th birthday;

(B) the day of the student's 14th birthday, if the student was also eligible for adoption on or after that day; or

(C) the day the student graduated from high school or received the equivalent of a high school diploma; and

(2) enrolls in an institution of higher education as an undergraduate student not later than:

(A) the third anniversary of the date the student was discharged from the foster or other residential care, the date the student graduated from high school, or the date the student received the equivalent of a high school diploma, whichever date is

1 earliest; or

2 (B) the student's 21st birthday.

3 (b) The Texas Education Agency and the Texas Higher  
4 Education Coordinating Board shall develop outreach programs to  
5 ensure that students in foster or other residential care in grades  
6 9-12 are aware of the availability of the exemption from the payment  
7 of tuition and fees provided by this section.

8 SECTION 1.02. Section 54.2111, Education Code, is amended  
9 to read as follows:

10 Sec. 54.2111. EXEMPTIONS FOR ADOPTED STUDENTS FORMERLY IN  
11 FOSTER OR OTHER RESIDENTIAL CARE. (a) A student is exempt from the  
12 payment of tuition and fees authorized by this chapter if the  
13 student:

14 (1) was adopted; and

15 (2) was the subject of an adoption assistance  
16 agreement under Subchapter D, Chapter 162, Family Code.

17 (b) The Texas Education Agency and the Texas Higher  
18 Education Coordinating Board shall develop outreach programs to  
19 ensure that adopted students in grades 9-12 formerly in foster or  
20 other residential care are aware of the availability of the  
21 exemption from the payment of tuition and fees provided by this  
22 section.

23 SECTION 1.03. Subchapter A, Chapter 107, Family Code, is  
24 amended by adding Section 107.0045 to read as follows:

25 Sec. 107.0045. DISCIPLINE OF ATTORNEY AD LITEM. An  
26 attorney ad litem who fails to perform the duties required by  
27 Sections 107.003 and 107.004 is subject to disciplinary action

1 under Subchapter E, Chapter 81, Government Code.

2 SECTION 1.04. Section 162.304, Family Code, is amended by  
3 adding Subsection (f) to read as follows:

4 (f) The department shall work with the Health and Human  
5 Services Commission and the federal government to develop a program  
6 to provide medical assistance under Chapter 32, Human Resources  
7 Code, to children who were in the conservatorship of the department  
8 at the time of adoptive placement and need medical or  
9 rehabilitative care but do not qualify for adoption assistance.

10 SECTION 1.05. Section 261.001, Family Code, is amended by  
11 amending Subdivision (2) to read as follows:

12 (2) "Department" means the Department of Family and  
13 Protective [and Regulatory] Services.

14 SECTION 1.06. Section 261.002, Family Code, is amended by  
15 adding Subsection (c) to read as follows:

16 (c) The department shall enter into agreements with other  
17 states to allow for the exchange of reports of child abuse and  
18 neglect in other states' central registry systems. The department  
19 shall use information obtained under this subsection in performing  
20 the background checks required under Section 42.056, Human  
21 Resources Code. The department shall cooperate with federal  
22 agencies and shall provide information and reports of child abuse  
23 and neglect to the appropriate federal agency that maintains the  
24 national registry for child abuse and neglect, if a national  
25 registry exists.

26 SECTION 1.07. (a) Subsection (a), Section 261.107, Family  
27 Code, is amended to read as follows:

1 (a) A person commits an offense if the person knowingly or  
2 intentionally makes a report as provided in this chapter that the  
3 person knows is false [~~or lacks factual foundation~~]. An offense  
4 under this section is a state jail felony [~~Class A misdemeanor~~]  
5 unless it is shown on the trial of the offense that the person has  
6 previously been convicted under this section, in which case the  
7 offense is a [~~state jail~~] felony of the third degree.

8 (b) The change in law made by this section to Subsection  
9 (a), Section 261.107, Family Code, applies only to an offense  
10 committed on or after the effective date of this section. An  
11 offense committed before the effective date of this section is  
12 covered by Section 261.107, Family Code, as it existed on the date  
13 the offense was committed, and the former law is continued in effect  
14 for that purpose. For purposes of this subsection, an offense is  
15 committed before the effective date of this section if any element  
16 of the offense occurs before that date.

17 SECTION 1.08. Section 261.201, Family Code, is amended by  
18 adding Subsection (f-1) to read as follows:

19 (f-1) The department shall provide to a relative or other  
20 individual with whom a child is placed any information the  
21 department considers necessary to ensure that the relative or other  
22 individual is prepared to meet the needs of the child. The  
23 information must include information regarding:

- 24 (1) any abuse or neglect suffered by the child;  
25 (2) the child's physical and mental health history,  
26 including any diagnosis of mental illness, and any physical or  
27 mental health issues that exist at the time the child is placed;

1           (3) any medications prescribed for the child; and

2           (4) the child's educational background and experience.

3           SECTION 1.09. (a) Subsections (a), (d), (f), (g), and (h),  
4 Section 261.301, Family Code, are amended to read as follows:

5           (a) With assistance from the appropriate state or local law  
6 enforcement agency as provided by this section, the department or  
7 designated agency shall make a prompt and thorough investigation of  
8 a report of child abuse or neglect allegedly committed by a person  
9 responsible for a child's care, custody, or welfare. The  
10 investigation shall be conducted without regard to any pending suit  
11 affecting the parent-child relationship.

12           (d) The department shall [~~may~~] by rule assign priorities and  
13 prescribe investigative procedures for investigations based on the  
14 severity and immediacy of the alleged harm to the child. The  
15 primary purpose of the investigation shall be the protection of the  
16 child. The rules must require the department to:

17           (1) immediately respond to a report of abuse and  
18 neglect that involves circumstances in which the death of the child  
19 or substantial bodily harm to the child would result unless the  
20 department immediately intervenes;

21           (2) respond within 24 hours to a report of abuse and  
22 neglect that is assigned the highest priority, other than a report  
23 described by Subdivision (1); and

24           (3) respond within 72 hours to a report of abuse and  
25 neglect that is assigned the second highest priority.

26           (f) An investigation of a report to the department [~~that is~~  
27 ~~assigned the highest priority in accordance with department rules~~

1 ~~adopted under Subsection (d) and]~~ that alleges that a child has been  
2 or may be the victim of conduct that constitutes a felony [~~an~~  
3 ~~immediate risk of physical or sexual abuse of a child that could~~  
4 ~~result in the death of or serious harm to the child]~~ shall be  
5 conducted jointly by a peace officer, as defined by Article 2.12,  
6 Code of Criminal Procedure, from the appropriate local law  
7 enforcement agency and the department or the agency responsible for  
8 conducting an investigation under Subchapter E.

9 (g) The inability or unwillingness of a local law  
10 enforcement agency to conduct a joint investigation under this  
11 section [~~Subsection (f)]~~ does not constitute grounds to prevent or  
12 prohibit the department from performing its duties under this  
13 subtitle. The department shall document any instance in which a law  
14 enforcement agency is unable or unwilling to conduct a joint  
15 investigation under this section [~~Subsection (f)]~~.

16 (h) The department and the appropriate local law  
17 enforcement agency shall conduct an investigation, other than an  
18 investigation under Subchapter E, as provided by this section and  
19 Article 2.27, Code of Criminal Procedure, if the investigation is  
20 of a report [~~of child abuse or neglect that is assigned the highest~~  
21 ~~priority in accordance with department rules adopted under~~  
22 ~~Subsection (d) and]~~ that alleges that a child has been or may be the  
23 victim of conduct that constitutes a felony [~~an immediate risk of~~  
24 ~~physical or sexual abuse of a child that could result in the death~~  
25 ~~of or serious harm to the child]~~. Immediately on receipt of a  
26 report described by this subsection, the department shall notify  
27 the appropriate local law enforcement agency of the report.

1 (b) The change in law made by this section to Section  
2 261.301, Family Code, applies to the investigation of a report of  
3 child abuse or neglect made on or after the effective date of this  
4 section. The investigation of a report of child abuse or neglect  
5 made before the effective date of this section is governed by the  
6 law in effect on the date the report was made, and the former law is  
7 continued in effect for that purpose.

8 (c) The Department of Family and Protective Services shall  
9 develop and implement an automated tracking and reporting system  
10 that enables the department to track information on initial  
11 contacts to monitor compliance with the requirements of Subsection  
12 (d), Section 261.301, Family Code, as amended by this section,  
13 relating to the timely response to reports of abuse and neglect.

14 SECTION 1.10. Subchapter D, Chapter 261, Family Code, is  
15 amended by adding Section 261.3011 to read as follows:

16 Sec. 261.3011. JOINT INVESTIGATION GUIDELINES AND  
17 TRAINING. (a) The department shall, in consultation with the  
18 appropriate law enforcement agencies, develop guidelines and  
19 protocols for joint investigations by the department and the law  
20 enforcement agency under Section 261.301. The guidelines and  
21 protocols must:

22 (1) clarify the respective roles of the department and  
23 law enforcement agency in conducting the investigation;

24 (2) require that mutual child protective services and  
25 law enforcement training and agreements be implemented by both  
26 entities to ensure the integrity and best outcomes of joint  
27 investigations; and

1           (3) incorporate the use of forensic methods in  
2 determining the occurrence of child abuse and neglect.

3           (b) The department shall collaborate with law enforcement  
4 agencies to provide to department investigators and law enforcement  
5 officers responsible for investigating reports of abuse and neglect  
6 joint training relating to methods to effectively conduct joint  
7 investigations under Section 261.301. The training must include  
8 information on interviewing techniques, evidence gathering, and  
9 testifying in court for criminal investigations.

10           SECTION 1.11. (a) Section 261.3015, Family Code, is  
11 amended by amending Subsection (a) and adding Subsection (a-1) to  
12 read as follows:

13           (a) In assigning priorities and prescribing investigative  
14 procedures based on the severity and immediacy of the alleged harm  
15 to a child under Section 261.301(d), the department [~~board by rule~~]  
16 shall establish a flexible response system to allow the department  
17 to make the most effective use of [~~allocate~~] resources by  
18 investigating serious cases of abuse and neglect and by screening  
19 out less serious cases of abuse and neglect if the department  
20 determines, after contacting a professional or other credible  
21 source, that the child's safety can be assured without further  
22 investigation. The department may administratively close the less  
23 serious cases without providing services or making a referral to  
24 another entity for assistance [~~providing assessment and family~~  
25 ~~preservation services in less serious cases~~].

26           (a-1) For purposes of Subsection (a), a case is considered  
27 to be a less serious case of abuse or neglect if the circumstances



1 of the case do not indicate an immediate risk of abuse or neglect  
2 that could result in the death of or serious harm to the child who is  
3 the subject of the case.

4 (b) To ensure the safety of children, the Department of  
5 Family and Protective Services shall use highly skilled caseworkers  
6 to perform the screening functions described by Subsection (a),  
7 Section 261.3015, Family Code, as amended by this section, and  
8 develop standardized policy guidelines, including accountability  
9 measures to monitor closed cases, to ensure that screening  
10 guidelines do not result in the closing of cases that should not be  
11 closed.

12 SECTION 1.12. Subsection (e), Section 261.302, Family Code,  
13 is amended to read as follows:

14 (e) An interview with a child alleged to be a victim of  
15 ~~[physical]~~ abuse or neglect conducted by the department or another  
16 person, other than a law enforcement agency, under the direction of  
17 the department ~~[sexual abuse]~~ shall be audiotaped or videotaped  
18 ~~[unless the investigating agency determines that good cause exists~~  
19 ~~for not audiotaping or videotaping the interview in accordance with~~  
20 ~~rules of the agency. Good cause may include, but is not limited to,~~  
21 ~~such considerations as the age of the child and the nature and~~  
22 ~~seriousness of the allegations under investigation. Nothing in~~  
23 ~~this subsection shall be construed as prohibiting the investigating~~  
24 ~~agency from audiotaping or videotaping an interview of a child on~~  
25 ~~any case for which such audiotaping or videotaping is not required~~  
26 ~~under this subsection]. The fact that the investigating agency~~  
27 failed to audiotape or videotape an interview is admissible at the

1 trial of the offense that is the subject of the interview.

2 SECTION 1.13. Subchapter D, Chapter 261, Family Code, is  
3 amended by adding Sections 261.3021, 261.3022, 261.3023, and  
4 261.3024 to read as follows:

5 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT.  
6 Subject to the appropriation of money for these purposes, the  
7 department shall:

8 (1) identify critical investigation actions that  
9 impact child safety and require department caseworkers to document  
10 those actions in a child's case file not later than the day after  
11 the action occurs;

12 (2) identify and develop a comprehensive set of  
13 casework quality indicators that must be reported in real time to  
14 support timely management oversight;

15 (3) provide department supervisors with access to  
16 casework quality indicators and train department supervisors on the  
17 use of that information in the daily supervision of caseworkers;

18 (4) develop a case tracking system that notifies  
19 department supervisors and management when a case is not  
20 progressing in a timely manner;

21 (5) use current data reporting systems to provide  
22 department supervisors and management with easier access to  
23 information; and

24 (6) train department supervisors and management on the  
25 use of data to monitor cases and make decisions.

26 Sec. 261.3022. CHILD SAFETY CHECK ALERT LIST. (a) If the  
27 department is unable to locate a family for purposes of

1 investigating a report of child abuse or neglect and the department  
2 has exhausted all means available to the department for locating  
3 the family, the department may seek assistance from the appropriate  
4 county attorney, district attorney, or criminal district attorney  
5 with responsibility for representing the department as provided by  
6 Section 264.009.

7 (b) If the department requests assistance, the county  
8 attorney, district attorney, or criminal district attorney, as  
9 applicable, may file an application with the court requesting the  
10 issuance of an ex parte order requiring the Texas Crime Information  
11 Center to place the members of the family the department is  
12 attempting to locate on a child safety check alert list. The  
13 application must include a summary of:

14 (1) the report of child abuse or neglect the  
15 department is attempting to investigate; and

16 (2) the department's efforts to locate the family.

17 (c) If the court determines after a hearing that the  
18 department has exhausted all means available to the department for  
19 locating the family, the court shall approve the application and  
20 order the Texas Crime Information Center to place the family on a  
21 child safety check alert list. The alert list must include:

22 (1) the name of the family member alleged to have  
23 abused or neglected a child according to the report the department  
24 is attempting to investigate;

25 (2) the name of the child who is the subject of the  
26 report;

27 (3) a code identifying the type of child abuse or

1 neglect alleged to have been committed against the child;

2 (4) the family's last known address; and

3 (5) the minimum criteria for an entry as established  
4 by the center.

5 Sec. 261.3023. LAW ENFORCEMENT RESPONSE TO CHILD SAFETY  
6 CHECK ALERT. (a) If a law enforcement officer encounters a person  
7 listed on the Texas Crime Information Center's child safety check  
8 alert list who is alleged to have abused or neglected a child, or  
9 encounters a child listed on the alert list who is the subject of a  
10 report of child abuse or neglect the department is attempting to  
11 investigate, the officer shall request information from the person  
12 or the child regarding the child's well-being and current  
13 residence.

14 (b) If the law enforcement officer determines that the  
15 circumstances described by Section 262.104 exist, the officer may  
16 take possession of the child without a court order as authorized by  
17 that section if the officer is able to locate the child. If the  
18 circumstances described by Section 262.104 do not exist, the  
19 officer shall obtain the child's current address and any other  
20 relevant information and report that information to the department.

21 Sec. 261.3024. REMOVAL FROM CHILD SAFETY CHECK ALERT LIST.

22 (a) A law enforcement officer who locates a child listed on the  
23 Texas Crime Information Center's child safety check alert list who  
24 is the subject of a report of child abuse or neglect the department  
25 is attempting to investigate and who reports the child's current  
26 address and other relevant information to the department under  
27 Section 261.3023 shall report to the Texas Crime Information Center

1 that the child has been located.

2 (b) If the department locates a child described by  
3 Subsection (a) through a means other than information reported by a  
4 law enforcement officer under Subsection (a), the department shall  
5 report to the Texas Crime Information Center that the child has been  
6 located.

7 (c) On receipt of notice under this section that a child has  
8 been located, the Texas Crime Information Center shall remove the  
9 child and the child's family from the child safety check alert list.

10 SECTION 1.14. Subchapter D, Chapter 261, Family Code, is  
11 amended by adding Section 261.3031 to read as follows:

12 Sec. 261.3031. FAILURE TO COOPERATE WITH INVESTIGATION;  
13 DEPARTMENT RESPONSE. If a parent or other person refuses to  
14 cooperate with the department's investigation of the alleged abuse  
15 or neglect of a child and the refusal poses a risk to the child's  
16 safety, the department shall seek assistance from the appropriate  
17 county attorney or district attorney or criminal district attorney  
18 with responsibility for representing the department as provided by  
19 Section 264.009 to obtain a court order as described by Section  
20 261.303.

21 SECTION 1.15. Subchapter D, Chapter 261, Family Code, is  
22 amended by adding Section 261.3032 to read as follows:

23 Sec. 261.3032. INTERFERENCE WITH INVESTIGATION; CRIMINAL  
24 PENALTY. (a) A person commits an offense if, with the intent to  
25 interfere with the department's investigation of a report of abuse  
26 or neglect of a child, the person takes, retains, or conceals the  
27 child and the person's taking, retention, or concealment interferes

1 with the department's investigation.

2 (b) An offense under this section is a Class B misdemeanor.

3 (c) If conduct that constitutes an offense under this  
4 section also constitutes an offense under any other law, the actor  
5 may be prosecuted under this section or the other law.

6 SECTION 1.16. (a) Section 261.307, Family Code, is amended  
7 to read as follows:

8 Sec. 261.307. INFORMATION RELATING TO INVESTIGATION  
9 PROCEDURE. (a) As soon as possible after initiating an  
10 investigation of a parent or other person having legal custody of a  
11 child, the department shall make every reasonable effort to provide  
12 to the person:

13 (1) a [~~brief and easily understood~~] summary that [of]:

14 (A) is brief and easily understood;

15 (B) is written in a language that the person  
16 understands, or if the person is illiterate, is read to the person  
17 in a language that the person understands; and

18 (C) contains the following information:

19 (i) [~~(1)~~] the department's procedures for  
20 conducting an investigation of alleged child abuse or neglect,  
21 including:

22 (a) [~~(A)~~] a description of the  
23 circumstances under which the department would request to remove  
24 the child from the home through the judicial system; and

25 (b) [~~(B)~~] an explanation that the law  
26 requires the department to refer all reports of alleged child abuse  
27 or neglect to a law enforcement agency for a separate determination

1 of whether a criminal violation occurred;

2 (ii) [~~(2)~~] the person's right to file a  
3 complaint with the department or to request a review of the findings  
4 made by the department in the investigation;

5 (iii) [~~(3)~~] the person's right to review  
6 all records of the investigation unless the review would jeopardize  
7 an ongoing criminal investigation or the child's safety;

8 (iv) [~~(4)~~] the person's right to seek legal  
9 counsel;

10 (v) [~~(5)~~] references to the statutory and  
11 regulatory provisions governing child abuse and neglect and how the  
12 person may obtain copies of those provisions; and

13 (vi) [~~(6)~~] the process the person may use  
14 to acquire to the child if the child is removed from the home;

15 (2) a proposed child placement resources form that  
16 instructs the parent or other person having legal custody of the  
17 child to complete and return the form to the department or agency  
18 and to identify in the form three individuals who could be relatives  
19 or designated caregivers, as those terms are defined by Section  
20 264.751; and

21 (3) the informational manual required by Section  
22 261.3071.

23 (b) In addition to the information required to be provided  
24 under Subsection (a), the department shall provide to the person  
25 described by that subsection any information required to be  
26 provided by the federal Child Abuse Prevention and Treatment Act  
27 (Pub. L. No. 93-247) and its subsequent amendments by the Keeping

1 Children and Families Safe Act of 2003 (Pub. L. No. 108-36). To the  
2 extent of any conflict between Subsection (a) and those federal  
3 laws, the federal law prevails.

4 (b) The Department of Family and Protective Services shall  
5 develop the proposed child placement resources form required to be  
6 provided under Section 261.307, Family Code, as amended by this  
7 section, not later than November 1, 2005.

8 (c) The Department of Family and Protective Services shall  
9 provide the proposed child placement resources form required under  
10 Section 261.307, Family Code, as amended by this section, to the  
11 parent or other person having legal custody of a child who is the  
12 subject of an investigation of abuse or neglect that is commenced on  
13 or after November 1, 2005.

14 SECTION 1.17. Subchapter D, Chapter 261, Family Code, is  
15 amended by adding Section 261.3071 to read as follows:

16 Sec. 261.3071. INFORMATIONAL MANUAL. (a) In this section,  
17 "relative caregiver" and "designated caregiver" have the meanings  
18 assigned those terms by Section 264.751.

19 (b) The department shall develop and publish an  
20 informational manual that provides information for:

21 (1) a parent or other person having custody of a child  
22 who is the subject of an investigation under this chapter; and

23 (2) a person who is selected by the department to be  
24 the child's relative or designated caregiver.

25 (c) Information provided in the manual must be in both  
26 English and Spanish and must include:

27 (1) useful indexes of information such as telephone



1 numbers;

2 (2) the information required to be provided under  
3 Section 261.307(1);

4 (3) information describing the rights and duties of a  
5 relative or designated caregiver; and

6 (4) information regarding the relative and other  
7 designated caregiver program under Subchapter I, Chapter 264.

8 SECTION 1.18. Section 261.310, Family Code, is amended by  
9 amending Subsection (c) and adding Subsection (e) to read as  
10 follows:

11 (c) The professional training curriculum developed under  
12 this section shall include:

13 (1) information concerning:

14 (A) [~~(1)~~] physical abuse and neglect, including  
15 distinguishing physical abuse from ordinary childhood injuries;

16 (B) [~~(2)~~] psychological abuse and neglect;

17 (C) [~~(3)~~] available treatment resources; and

18 (D) [~~(4)~~] the incidence and types of reports of  
19 child abuse and neglect that are received by the investigating  
20 agencies, including information concerning false reports;

21 (2) law-enforcement-style training, including  
22 training relating to forensic interviewing and investigatory  
23 techniques and the collection of physical evidence; and

24 (3) training regarding applicable federal law,  
25 including the Adoption and Safe Families Act of 1997 (Pub. L. No.  
26 105-89) and the Child Abuse Prevention and Treatment Act (Pub. L.  
27 No. 93-247) and its subsequent amendments by the Keeping Children

1 and Families Safe Act of 2003 (Pub. L. No. 108-36).

2 (e) The department, in conjunction with the Department of  
3 Public Safety, shall provide to the department's residential  
4 child-care facility licensing investigators advanced training in  
5 investigative protocols and techniques.

6 SECTION 1.19. Subchapter D, Chapter 261, Family Code, is  
7 amended by adding Section 261.3101 to read as follows:

8 Sec. 261.3101. FORENSIC INVESTIGATION SUPPORT. The  
9 department shall, subject to the availability of money:

10 (1) employ or contract with medical and law  
11 enforcement professionals who shall be strategically placed  
12 throughout the state to provide forensic investigation support and  
13 to assist caseworkers with assessment decisions and intervention  
14 activities;

15 (2) employ or contract with subject matter experts to  
16 serve as consultants to department caseworkers in all aspects of  
17 their duties; and

18 (3) designate persons who shall act as liaisons within  
19 the department whose primary functions are to develop relationships  
20 with local law enforcement agencies and courts.

21 SECTION 1.20. Section 261.3125, Family Code, is amended to  
22 read as follows:

23 Sec. 261.3125. CHILD SAFETY SPECIALISTS [~~INVESTIGATIONS~~  
24 ~~COORDINATOR~~]. (a) The department shall employ in each of the  
25 department's administrative regions [~~region of the department for~~  
26 ~~child protective services~~] at least one child safety specialist  
27 [~~protective services investigations coordinator~~]. The job

1 responsibilities of the child safety specialist [~~investigations~~  
2 ~~coordinator~~] must focus [~~only~~] on child abuse and neglect  
3 investigation issues, including reports of child abuse required by  
4 Section 261.101, to achieve a greater compliance with that section,  
5 and on assessing and improving the effectiveness of the department  
6 in providing for the protection of children in the region.

7 (b) The duties of a child safety specialist [~~protective~~  
8 ~~services investigations coordinator~~] must include the duty to:

9 (1) conduct staff reviews and evaluations of cases  
10 determined to involve a high risk to the health or safety of a  
11 child, including cases of abuse reported under Section 261.101, to  
12 ensure that risk assessment tools are fully and correctly used;

13 (2) review and evaluate [~~monitor~~] cases in which there  
14 have been multiple referrals to the department of child abuse or  
15 neglect involving the same family, child, or person alleged to have  
16 committed the abuse or neglect; and

17 (3) approve decisions and assessments related to  
18 investigations of cases of child abuse or neglect that involve a  
19 high risk to the health or safety of a child.

20 SECTION 1.21. Subchapter D, Chapter 261, Family Code, is  
21 amended by adding Section 261.3126 to read as follows:

22 Sec. 261.3126. COLOCATION OF INVESTIGATORS. (a) In each  
23 county, to the extent possible, the department and the local law  
24 enforcement agencies that investigate child abuse in the county  
25 shall collocate in the same offices investigators from the  
26 department and the law enforcement agencies to improve the  
27 efficiency of child abuse investigations. With approval of the

1 local children's advocacy center and its partner agencies, in each  
2 county in which a children's advocacy center established under  
3 Section 264.402 is located, the department shall attempt to locate  
4 investigators from the department and county and municipal law  
5 enforcement agencies at the center.

6 (b) A law enforcement agency is not required to comply with  
7 the colocation requirements of this section if the law enforcement  
8 agency does not have a full-time peace officer solely assigned to  
9 investigate reports of child abuse and neglect.

10 (c) If a county does not have a children's advocacy center,  
11 the department shall work with the local community to encourage one  
12 as provided by Section 264.402.

13 SECTION 1.22. Section 261.315, Family Code, is amended to  
14 read as follows:

15 Sec. 261.315. REMOVAL OF CERTAIN INVESTIGATION INFORMATION  
16 FROM RECORDS. (a) At the conclusion of an investigation in which  
17 the department determines that the person alleged to have abused or  
18 neglected a child did not commit abuse or neglect, the department  
19 shall ~~[notify the person of the person's right to request the~~  
20 ~~department to]~~ remove information about the person's alleged role  
21 in the abuse or neglect report from the department's records.

22 ~~(b) [On request under Subsection (a) by a person whom the~~  
23 ~~department has determined did not commit abuse or neglect, the~~  
24 ~~department shall remove information from the department's records~~  
25 ~~concerning the person's alleged role in the abuse or neglect~~  
26 ~~report.~~

27 ~~[(c)]~~ The board shall adopt rules necessary to administer

1 this section.

2 SECTION 1.23. Subchapter E, Chapter 261, Family Code, is  
3 amended by adding Section 261.410 to read as follows:

4 Sec. 261.410. REPORT OF ABUSE BY OTHER CHILDREN. (a) In  
5 this section:

6 (1) "Physical abuse" means:

7 (A) physical injury that results in substantial  
8 harm to the child requiring emergency medical treatment and  
9 excluding an accident or reasonable discipline by a parent,  
10 guardian, or managing or possessory conservator that does not  
11 expose the child to a substantial risk of harm; or

12 (B) failure to make a reasonable effort to  
13 prevent an action by another person that results in physical injury  
14 that results in substantial harm to the child.

15 (2) "Sexual abuse" means:

16 (A) sexual conduct harmful to a child's mental,  
17 emotional, or physical welfare, including conduct that constitutes  
18 the offense of indecency with a child under Section 21.11, Penal  
19 Code, sexual assault under Section 22.011, Penal Code, or  
20 aggravated sexual assault under Section 22.021, Penal Code;

21 (B) failure to make a reasonable effort to  
22 prevent sexual conduct harmful to a child;

23 (C) compelling or encouraging a child to engage  
24 in sexual conduct as defined by Section 43.01, Penal Code;

25 (D) causing, permitting, encouraging, engaging  
26 in, or allowing the photographing, filming, or depicting of a child  
27 if the person knew or should have known that the resulting

1 photograph, film, or depiction of the child is obscene as defined by  
2 Section 43.21, Penal Code, or pornographic; or

3 (E) causing, permitting, encouraging, engaging  
4 in, or allowing a sexual performance by a child as defined by  
5 Section 43.25, Penal Code.

6 (b) An agency that operates, licenses, certifies, or  
7 registers a facility shall require a residential child-care  
8 facility to report each incident of physical or sexual abuse  
9 committed by a child against another child.

10 (c) Using information received under Subsection (b), the  
11 agency that operates, licenses, certifies, or registers a facility  
12 shall compile a report that includes information:

13 (1) regarding the number of cases of physical and  
14 sexual abuse committed by a child against another child;

15 (2) identifying the residential child-care facility;

16 (3) regarding the date each allegation of abuse was  
17 made;

18 (4) regarding the date each investigation was started  
19 and concluded;

20 (5) regarding the findings and results of each  
21 investigation; and

22 (6) regarding the number of children involved in each  
23 incident investigated.

24 SECTION 1.24. Subchapter B, Chapter 262, Family Code, is  
25 amended by adding Section 262.114 to read as follows:

26 Sec. 262.114. EVALUATION OF IDENTIFIED RELATIVES AND OTHER  
27 DESIGNATED INDIVIDUALS; PLACEMENT. (a) Before a full adversary

1 hearing under Subchapter C, the Department of Family and Protective  
2 Services must perform a background and criminal history check and,  
3 if appropriate, a home study, of the relatives or other designated  
4 individuals identified as a potential relative or designated  
5 caregiver, as defined by Section 264.751, on the proposed child  
6 placement resources form provided under Section 261.307. The  
7 department shall perform these evaluations of each person listed on  
8 the form until the department identifies a relative or other  
9 designated individual qualified to be a substitute caregiver. The  
10 department may eliminate a person as a potential relative or  
11 designated caregiver based solely on a background and criminal  
12 history check. A final determination that a potential relative or  
13 designated caregiver is qualified to be a substitute caregiver must  
14 also include completion of the home study.

15 (a-1) For the purposes of this section, "background" means,  
16 but is not limited to, a history of child abuse and neglect.

17 (b) The department shall place a child with a relative or  
18 other designated individual identified on the proposed child  
19 placement resources form if the department, with input from the  
20 attorney ad litem, if the attorney ad litem has met with the child,  
21 determines that the placement is in the best interest of the child.  
22 The department may place the child with the relative or designated  
23 individual before conducting the home study required under  
24 Subsection (a), only in exigent circumstances, as determined by the  
25 department on an individual case basis. In determining the  
26 placement of the child, the department shall at all times consider  
27 the child's safety to be the paramount concern. The department

1 shall provide a copy of the informational manual required under  
2 Section 261.3071 to the relative or other designated caregiver at  
3 the time of the child's placement.

4 SECTION 1.25. (a) Subsection (c), Section 262.201, Family  
5 Code, is amended to read as follows:

6 (c) If the court finds sufficient evidence to satisfy a  
7 person of ordinary prudence and caution that there is a continuing  
8 danger to the physical health or safety of the child and for the  
9 child to remain in the home is contrary to the welfare of the child,  
10 the court shall issue an appropriate temporary order under Chapter  
11 105. The court shall require each parent, alleged father, or  
12 relative of the child before the court to submit the proposed child  
13 placement resources form provided under Section 261.307, if the  
14 form has not been previously provided, and provide the Department  
15 of Family and Protective [~~and Regulatory~~] Services with information  
16 necessary to locate any other absent parent, alleged father, or  
17 relative of the child. The court shall inform each parent, alleged  
18 father, or relative of the child before the court that the person's  
19 failure to submit the proposed child placement resources form will  
20 not delay any court proceedings relating to the child. The court  
21 shall inform each parent in open court that parental and custodial  
22 rights and duties may be subject to restriction or to termination  
23 unless the parent or parents are willing and able to provide the  
24 child with a safe environment. If the court finds that the child  
25 requires protection from family violence by a member of the child's  
26 family or household, the court shall render a protective order  
27 under Title 4 for the child. In this subsection, "family violence"



1 has the meaning assigned by Section 71.004.

2 (b) The change in law made by this section to Section  
3 262.201(c), Family Code, applies only to a full adversary hearing  
4 that occurs on or after November 1, 2005. A full adversary hearing  
5 that occurs before that date is governed by the law as it existed  
6 before amendment by this section, and the former law is continued in  
7 effect for that purpose.

8 SECTION 1.26. (a) Section 263.201, Family Code, is amended  
9 by adding Subsection (c) to read as follows:

10 (c) The court shall require each parent, alleged father, or  
11 relative of the child before the court to submit the proposed child  
12 placement resources form provided under Section 261.307 at the  
13 status hearing, if the form has not previously been submitted.

14 (b) The change in law made by this section to Section  
15 263.201, Family Code, applies only to a status hearing that occurs  
16 on or after November 1, 2005. A status hearing that occurs before  
17 that date is governed by the law as it existed before amendment by  
18 this section, and the former law is continued in effect for that  
19 purpose.

20 SECTION 1.27. (a) Section 263.102, Family Code, is amended  
21 by amending Subsection (a) and adding Subsections (d) and (e) to  
22 read as follows:

23 (a) The service plan must:

24 (1) be specific;

25 (2) be in writing in a language that the parents  
26 understand, or made otherwise available;

27 (3) be prepared by the department or other agency in

1 conference with the child's parents;

2 (4) state appropriate deadlines;

3 (5) state whether the goal of the plan is:

4 (A) return of the child to the child's parents;

5 (B) termination of parental rights and placement  
6 of the child for adoption; or

7 (C) because of the child's special needs or  
8 exceptional circumstances, continuation of the child's care out of  
9 the child's home;

10 (6) state steps that are necessary to:

11 (A) return the child to the child's home if the  
12 placement is in foster care;

13 (B) enable the child to remain in the child's  
14 home with the assistance of a service plan if the placement is in  
15 the home under the department's or other agency's supervision; or

16 (C) otherwise provide a permanent safe placement  
17 for the child;

18 (7) state the actions and responsibilities that are  
19 necessary for the child's parents to take to achieve the plan goal  
20 during the period of the service plan and the assistance to be  
21 provided to the parents by the department or other authorized  
22 agency toward meeting that goal;

23 (8) state any specific skills or knowledge that the  
24 child's parents must acquire or learn, as well as any behavioral  
25 changes the parents must exhibit, to achieve the plan goal;

26 (9) state the actions and responsibilities that are  
27 necessary for the child's parents to take to ensure that the child

1 attends school and maintains or improves the child's academic  
2 performance;

3 (10) state the name of the person with the department  
4 or other agency whom the child's parents may contact for  
5 information relating to the child if other than the person  
6 preparing the plan; and

7 (11) [~~9~~] prescribe any other term or condition that  
8 the department or other agency determines to be necessary to the  
9 service plan's success.

10 (d) The department must write the service plan in a clear  
11 and understandable manner in order to facilitate a parent's ability  
12 to follow the requirements of the service plan.

13 (e) Regardless of whether the goal stated in a child's  
14 service plan as required under Subsection (a)(5) is to return the  
15 child to the child's parents or to terminate parental rights and  
16 place the child for adoption, the department shall concurrently  
17 provide to the child and the child's family, as applicable:

18 (1) time-limited family reunification services as  
19 defined by 42 U.S.C. Section 629a for a period not to exceed the  
20 period within which the court must render a final order in or  
21 dismiss the suit affecting the parent-child relationship with  
22 respect to the child as provided by Subchapter E; and

23 (2) adoption promotion and support services as defined  
24 by 42 U.S.C. Section 629a.

25 (b) Subsection (c), Section 263.202, Family Code, is  
26 amended to read as follows:

27 (c) The court shall advise the parties that progress under

1 the service plan will be reviewed at all subsequent hearings,  
2 including a review of whether the parties have acquired or learned  
3 any specific skills or knowledge stated in the service plan.

4 (c) The changes in law made by Section 263.102 and  
5 Subsection (c), Section 263.202, Family Code, as amended by this  
6 section, apply only to a child placed in the custody of the  
7 Department of Family and Protective Services on or after the  
8 effective date of this section. A child placed in the custody of  
9 the department before the effective date of this section is  
10 governed by the law in effect on the date the child was placed in the  
11 department's custody, and the former law is continued in effect for  
12 that purpose.

13 SECTION 1.28. Section 263.202, Family Code, is amended by  
14 amending Subsection (b) and adding Subsection (e) to read as  
15 follows:

16 (b) Except as provided by Subsection (e), a [A] status  
17 hearing shall be limited to matters related to the contents and  
18 execution of the service plan filed with the court. The court shall  
19 review the service plan that the department or other agency filed  
20 under this chapter for reasonableness, accuracy, and compliance  
21 with requirements of court orders and make findings as to whether:

22 (1) a plan that has the goal of returning the child to  
23 the child's parents adequately ensures that reasonable efforts are  
24 made to enable the child's parents to provide a safe environment for  
25 the child; and

26 (2) the child's parents have reviewed and understand  
27 the service plan and have been advised that unless the parents are

1 willing and able to provide the child with a safe environment, even  
2 with the assistance of a service plan, within the reasonable period  
3 of time specified in the plan, the parents' parental and custodial  
4 duties and rights may be subject to restriction or to termination  
5 under this code or the child may not be returned to the parents.

6 (e) At the status hearing, the court shall make a finding as  
7 to whether the court has identified the individual who has the right  
8 to consent for the child under Section 266.003.

9 SECTION 1.29. Subsection (b), Section 263.401, Family Code,  
10 is amended to read as follows:

11 (b) The court may not retain the suit on the court's docket  
12 after the time described by Subsection (a) unless the court finds  
13 that extraordinary circumstances prevent the court from rendering a  
14 final order within the time described by Subsection (a) and that  
15 continuing the appointment of the department as temporary managing  
16 conservator is in the best interest of the child. If the court  
17 makes those findings, the court may retain the suit on the court's  
18 docket for a period not to exceed 180 days after the time described  
19 by Subsection (a) [~~, if the court finds that continuing the~~  
20 ~~appointment of the department as temporary managing conservator is~~  
21 ~~in the best interest of the child~~]. If the court retains the suit on  
22 the court's docket, the court shall render an order in which the  
23 court:

24 (1) schedules the new date for dismissal of the suit  
25 not later than the 180th day after the time described by Subsection  
26 (a);

27 (2) makes further temporary orders for the safety and

1 welfare of the child as necessary to avoid further delay in  
2 resolving the suit; and

3 (3) sets a final hearing on a date that allows the  
4 court to render a final order before the required date for dismissal  
5 of the suit under this subsection.

6 SECTION 1.30. (a) Subsection (c), Section 263.502, Family  
7 Code, is amended to read as follows:

8 (c) The placement review report must:

9 (1) evaluate whether the child's current placement is  
10 appropriate for meeting the child's needs;

11 (2) evaluate whether efforts have been made to ensure  
12 placement of the child in the least restrictive environment  
13 consistent with the best interest and special needs of the child if  
14 the child is placed in institutional care;

15 (3) contain a discharge plan for a child who is at  
16 least 16 years of age that identifies [~~identify~~] the services and  
17 specific tasks that are needed to assist the [a] child [~~who is at~~  
18 ~~least 16 years of age~~] in making the transition from substitute care  
19 to adult [~~independent~~] living and describes the services that are  
20 available through the Preparation for Adult Living Program operated  
21 by the department [~~if the services are available in the community~~];

22 (4) evaluate whether the child's current educational  
23 placement is appropriate for meeting the child's academic needs;

24 (5) identify other plans or services that are needed  
25 to meet the child's special needs or circumstances; and

26 (6) [~~(5)~~] describe the efforts of the department or  
27 authorized agency to place the child for adoption if parental

1 rights to the child have been terminated and the child is eligible  
2 for adoption, including efforts to provide adoption promotion and  
3 support services as defined by 42 U.S.C. Section 629a and other  
4 efforts consistent with the federal Adoption and Safe Families Act  
5 of 1997 (Pub. L. No. 105-89).

6 (b) In implementing the provisions of Subdivision (3),  
7 Subsection (c), Section 263.502, Family Code, as amended by this  
8 section, the Department of Family and Protective Services shall, to  
9 the extent that funding is appropriated for this purpose, contract  
10 with outside entities to assist in the discharge planning process.

11 SECTION 1.31. Section 264.001, Family Code, is amended to  
12 read as follows:

13 Sec. 264.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

14 (1) "Department" [~~,"department"~~] means the Department  
15 of Family and Protective [~~and Regulatory~~] Services.

16 (2) "Commission" means the Health and Human Services  
17 Commission.

18 (3) "Executive commissioner" means the executive  
19 commissioner of the Health and Human Services Commission.

20 (4) "Residential child-care facility" has the meaning  
21 assigned by Section 42.002, Human Resources Code.

22 SECTION 1.32. Subchapter A, Chapter 264, Family Code, is  
23 amended by adding Section 264.0091 to read as follows:

24 Sec. 264.0091. USE OF TELECONFERENCING AND  
25 VIDEOCONFERENCING TECHNOLOGY. The department, in cooperation with  
26 district and county courts, shall expand the use of  
27 teleconferencing and videoconferencing to facilitate participation

1 by medical experts and other individuals in court proceedings.

2 SECTION 1.33. Section 264.101, Family Code, is amended by  
3 adding Subsection (d-1) to read as follows:

4 (d-1) The executive commissioner may adopt rules that  
5 prescribe the maximum amount of state money that a residential  
6 child-care facility may spend on nondirect residential services,  
7 including administrative services. The commission shall recover  
8 the money that exceeds the maximum amount established under this  
9 subsection.

10 SECTION 1.34. (a) Section 264.106, Family Code, is amended  
11 to read as follows:

12 Sec. 264.106. REQUIRED CONTRACTS FOR SUBSTITUTE CARE  
13 SERVICES. (a) In this section:

14 (1) "Case management services" means services  
15 provided to or for, or functions performed with respect to, a child  
16 for whom the department has been appointed temporary or permanent  
17 managing conservator or the child's family in managing a case  
18 involving the child. The term includes:

19 (A) conducting caseworker-child visits or family  
20 visits;

21 (B) convening family group conferences;

22 (C) developing or revising case plans;

23 (D) coordinating and monitoring services needed  
24 by the family;

25 (E) assuming duties related to court proceedings  
26 involving the child, including preparing court reports and  
27 attending court hearings and permanency planning hearings, but not



1 including duties related to court proceedings involving the  
2 processing of an adoption of the child; and

3 (F) other services to ensure that the child is  
4 progressing toward permanency in accordance with federal law and  
5 the laws of this state.

6 (2) "Substitute care provider" means a child-care  
7 institution or child-placing agency, as defined by Section 42.002,  
8 Human Resources Code.

9 (3) "Substitute care services" means services  
10 provided to or for children in substitute care, including the  
11 recruitment, training, and management of foster parents, the  
12 recruitment of adoptive families, and the facilitation and  
13 processing of adoptions. The term does not include case management  
14 services.

15 (b) The department shall:

16 (1) assess the need for substitute care services  
17 throughout the state for children for whom the department has been  
18 appointed temporary or permanent managing conservator; and

19 (2) contract with substitute care providers [only to  
20 the extent necessary to meet the need] for the [those] services  
21 described by Subdivision (1).

22 ~~[(b) Before contracting with a substitute care provider,~~  
23 ~~the department shall determine whether:~~

24 ~~[(1) community resources are available to support~~  
25 ~~children placed under the provider's care; and~~

26 ~~[(2) the appropriate public school district has~~  
27 ~~sufficient resources to support children placed under the~~

1 ~~provider's care if the children will attend public school.]~~

2 (c) The department shall:

3 (1) monitor the quality of services for which the  
4 department contracts under this section;

5 (2) ensure that the services are provided in  
6 accordance with federal law and the laws of this state, including  
7 department rules and rules of the Department of State Health  
8 Services and the Texas Commission on Environmental Quality; and

9 (3) attempt to contract with substitute care providers  
10 that are community-based organizations that will:

11 (A) increase local foster and adoptive placement  
12 options for all children, especially teenagers, sibling groups,  
13 children with severe or multiple disabilities, and other children  
14 who are difficult to place; and

15 (B) expand efforts to recruit foster families,  
16 adoptive families, and alternative care providers through  
17 faith-based and other targeted recruitment programs.

18 (d) In addition to the requirements of Section 40.058(b),  
19 Human Resources Code, a contract with a substitute care provider  
20 must include provisions that:

21 (1) enable the department to monitor the effectiveness  
22 of the provider's services; ~~and~~

23 (2) specify performance criteria; and

24 (3) authorize the department to terminate the contract  
25 or impose sanctions for a violation of a provision of the contract  
26 that specifies performance criteria.

27 (e) ~~(d)~~ In determining whether to contract with a

1 substitute care provider, the department shall consider the  
2 provider's performance under any previous contract for substitute  
3 care services between the department and the provider.

4 (f) A contract under this section does not affect the rights  
5 and duties of the department in the department's capacity as the  
6 temporary or permanent managing conservator of a child.

7 (g) Notwithstanding any other law, on and after September 1,  
8 2008, the department may not directly provide substitute care  
9 services for children for whom the department has been appointed  
10 temporary or permanent managing conservator, except for case  
11 management services.

12 ~~[(c) In this section, "substitute care provider" means a~~  
13 ~~person who provides residential care for children for 24 hours a~~  
14 ~~day, including:~~

15 ~~[(1) a child-care institution, as defined by Section~~  
16 ~~42.002, Human Resources Code,~~

17 ~~[(2) a child-placing agency, as defined by Section~~  
18 ~~42.002, Human Resources Code,~~

19 ~~[(3) a foster group home or foster family home, as~~  
20 ~~defined by Section 42.002, Human Resources Code, and~~

21 ~~[(4) an agency group home or agency home, as defined by~~  
22 ~~Section 42.002, Human Resources Code, other than an agency group~~  
23 ~~home, agency home, or a foster home verified or certified by the~~  
24 ~~department.]~~

25 (b) The executive commissioner of the Health and Human  
26 Services Commission shall adopt a substitute care transition plan  
27 and rules to implement Section 264.106, Family Code, as amended by

1 this section. The transition plan must provide that:

2 (1) as soon as possible after September 1, 2005, the  
3 Department of Family and Protective Services shall begin  
4 implementing Section 264.106, Family Code, as amended by this  
5 section; and

6 (2) on and after September 1, 2008:

7 (A) all substitute care services, as defined by  
8 Subsection (a), Section 264.106, Family Code, as amended by this  
9 section, for children for whom the department has been appointed  
10 temporary or permanent managing conservator must be provided by  
11 child-care institutions, child-placing agencies, foster group  
12 homes, and counties with a local child welfare board with which the  
13 department contracts; and

14 (B) notwithstanding any other law, the  
15 department may not directly provide those services.

16 (c) Section 264.106, Family Code, as amended by this  
17 section, applies only to a contract for substitute care services  
18 that is entered into or renewed on or after the effective date of  
19 this section. A contract that is entered into or renewed before the  
20 effective date of this section is governed by the law in effect on  
21 the date the contract was entered into or renewed, and the former  
22 law is continued in effect for that purpose.

23 SECTION 1.35. ADOPTION OF TRANSITION PLAN. Not later than  
24 March 1, 2006, the Health and Human Services Commission and the  
25 Department of Family and Protective Services shall, in consultation  
26 with private entities under contract to provide substitute care  
27 services for the department, including members of the boards of

1 directors of the private entities and other community stakeholders,  
2 develop and adopt a substitute care services transition plan. The  
3 executive commissioner of the Health and Human Services Commission  
4 shall adopt rules to implement the privatization of substitute care  
5 services in this state. The transition plan developed by the  
6 department and the commission must:

7 (1) identify barriers to privatization and propose  
8 solutions to stimulate capacity and adjust program delivery;

9 (2) include an implementation plan to transfer all  
10 foster homes certified by the department to private child-placing  
11 agencies, ensuring minimum disruption to the children in foster  
12 care and to current foster parents;

13 (3) include a process for assessing each child who is  
14 transferred to a private substitute care provider to verify the  
15 child's service needs;

16 (4) include an implementation plan to transfer all  
17 adoption services to private agencies, including details of how and  
18 when cases will be transferred and how adoption provider contracts  
19 and reimbursement methods will be structured;

20 (5) detail financial arrangements and performance  
21 expectations for substitute care and case management providers  
22 that:

23 (A) provide incentives for desired results and  
24 explicit contract performance and outcome indicators;

25 (B) describe how financing options will increase  
26 flexibility to promote innovation and efficiency in service  
27 delivery; and

1 (C) provide balance between control over key  
2 decisions with the level of risk the contractor assumes;

3 (6) require the department to enter into contracts for  
4 the provision of substitute care and describe the procurement and  
5 contracting process, including:

6 (A) describing how the department will shift from  
7 an open-enrollment system to competitive procurement; and

8 (B) developing a procurement and contracting  
9 schedule to ensure full implementation not later than September 1,  
10 2008;

11 (7) address the immediate and ongoing training that is  
12 needed both for department staff who are shifting roles and for  
13 contractors, including substitute care and case management  
14 providers;

15 (8) provide that a substitute care provider that  
16 contracts with the department to provide substitute care services  
17 shall give a preference in hiring to qualified department employees  
18 in good standing with the department who provide substitute care  
19 services and whose positions with the department may be eliminated  
20 as a result of the privatization of substitute care services; and

21 (9) describe how the transition will impact the  
22 state's ability to capture federal funding and examine options for  
23 further maximizing federal funding opportunities and increasing  
24 flexibility.

25 SECTION 1.36. PRIVATIZATION OF CHILD PROTECTIVE SERVICES.

26 (a) The Health and Human Services Commission shall conduct a study  
27 to identify functions of the child protective services division of

1 the Department of Family and Protective Services that are not  
2 currently performed by a private person or performed by an entity  
3 under a contract with the department on a widespread basis, would  
4 result in improving the welfare of children receiving services from  
5 the department or in other benefits to the department.

6 (b) If the Health and Human Services Commission determines  
7 that contracting with a private person or entity to perform certain  
8 functions described by Subsection (a) of this section would be  
9 beneficial, the commission shall implement privatization of those  
10 functions through a pilot program in one county or one region of the  
11 state until September 1, 2009.

12 (c) The Health and Human Services Commission shall:

13 (1) ensure that the process for privatizing functions  
14 under Subsection (b) of this section and for monitoring that  
15 privatization includes rigorous accountability and oversight  
16 mechanisms;

17 (2) ensure that any contract entered into under  
18 Subsection (b) of this section contains the provisions required  
19 under Subsection (b), Section 40.058, Human Resources Code, as  
20 amended by this Act, and is subject to the performance monitoring  
21 standards under Subsection (c), Section 40.058, Human Resources  
22 Code, as amended by this Act;

23 (3) develop adequate contingency plans that allow for  
24 emergency takeovers of privatized functions if there is a  
25 disruption in the services provided by the contracted person or  
26 entity; and

27 (4) provide opportunities for any interested parties

1 to comment and otherwise have input in all stages of the process for  
2 privatizing functions under Subsection (b) of this section.

3 (d) Not later than December 31, 2008, the Health and Human  
4 Services Commission shall report the results of any pilot program  
5 implemented under Subsection (b) of this section to the lieutenant  
6 governor, the speaker of the house of representatives, and the  
7 clerks of the standing committees of the senate and house of  
8 representatives with primary jurisdiction over the Department of  
9 Family and Protective Services. The report must include:

10 (1) an analysis comparing costs and benefits of using  
11 a private entity to provide child protective services versus the  
12 state providing those services;

13 (2) a description of the problems the commission  
14 experienced during the pilot programs and a description of any  
15 potential problems the commission anticipates with implementing  
16 the pilot programs statewide; and

17 (3) recommendations on whether the pilot programs  
18 should be expanded statewide.

19 SECTION 1.37. SUBSTITUTE CARE SERVICES TRANSITION TASK  
20 FORCE. (a) The substitute care services transition task force  
21 shall:

22 (1) review the substitute care services transition  
23 plan and rules adopted by the executive commissioner of the Health  
24 and Human Services Commission under this Act;

25 (2) monitor the implementation of Section 264.106,  
26 Family Code, as amended by this Act, by the Department of Family and  
27 Protective Services; and



1           (3) make recommendations to the department to  
2 facilitate the implementation of Section 264.106, Family Code, as  
3 amended by this Act.

4           (b) The task force is composed of three members, appointed  
5 as follows:

6                 (1) one member appointed by the lieutenant governor;

7                 (2) one member appointed by the speaker of the house of  
8 representatives; and

9                 (3) one member appointed by the comptroller.

10           (c) The member appointed under Subdivision (3), Subsection  
11 (b) of this section, serves as the presiding officer.

12           (d) The task force shall meet at least monthly.

13           (e) Not later than the 31st day after the date the  
14 Department of Family and Protective Services receives a  
15 recommendation under Subdivision (3), Subsection (a) of this  
16 section, the department shall implement the recommendation or, if  
17 necessary, the executive commissioner of the Health and Human  
18 Services Commission shall initiate rulemaking procedures to adopt  
19 rules to implement the recommendation.

20           (f) At least quarterly, the task force shall submit a report  
21 to the lieutenant governor, the speaker of the house of  
22 representatives, and the Legislative Budget Board regarding the  
23 status of the implementation of Section 264.106, Family Code, as  
24 amended by this Act.

25           (g) This section expires and the task force is abolished  
26 August 31, 2008.

27           SECTION 1.38. Section 264.1075, Family Code, is amended to

1 read as follows:

2           Sec. 264.1075. ASSESSING THE NEEDS OF A CHILD [~~USE OF~~  
3 ~~ASSESSMENT SERVICES~~]. (a) As soon as possible after a child  
4 begins receiving foster care under this subchapter, the department  
5 shall assess whether the child has a developmental disability or  
6 mental retardation. The commission shall establish the procedures  
7 that the department must use in making an assessment under this  
8 subsection. The procedures may include screening or participation  
9 by:

- 10                   (1) a private person experienced in the developmental  
11 disabilities or mental retardation of children;  
12                   (2) a local mental retardation authority; or  
13                   (3) a provider of a county with a local child welfare  
14 board.

15           (b) Before placing a child in substitute care, the  
16 department shall use assessment services provided by a child-care  
17 facility or child-placing agency in accordance with Section  
18 42.0425, Human Resources Code, to determine the appropriate  
19 substitute care for the child.

20           SECTION 1.39. Subchapter B, Chapter 264, Family Code, is  
21 amended by adding Section 264.1076 to read as follows:

22           Sec. 264.1076. FOSTER CARE DEVELOPMENTAL DISABILITIES  
23 ADVISORY COMMITTEE. (a) The Foster Care Developmental  
24 Disabilities Advisory Committee shall advise the department on  
25 issues relating to the care of foster children with developmental  
26 disabilities or mental retardation, including effective methods  
27 for:

1           (1) minimizing the number of foster children placed in  
2 institutions and maximizing the number of foster children receiving  
3 community-based care;

4           (2) training and supporting persons who provide foster  
5 care in a residential setting on issues relating to the particular  
6 needs of children with developmental disabilities or mental  
7 retardation;

8           (3) training employees of the department to promptly  
9 identify foster children with developmental disabilities or mental  
10 retardation;

11           (4) monitoring the care provided in residential  
12 settings to foster children with developmental disabilities or  
13 mental retardation;

14           (5) recruiting individuals to provide foster care in a  
15 residential setting to children with developmental disabilities or  
16 mental retardation;

17           (6) contracting with persons to care for foster  
18 children with developmental disabilities or mental retardation;

19           (7) planning for the transition of children with  
20 developmental disabilities or mental retardation out of foster care  
21 to enhance opportunities for the children to remain in their  
22 communities; and

23           (8) assigning levels of services for children with  
24 developmental disabilities or mental retardation and children with  
25 special health care needs.

26           (b) The executive commissioner shall determine the number  
27 of persons who serve on the committee.

1       (c) The executive commissioner shall appoint the members of  
2 the committee and determine each member's length of service. In  
3 making appointments to the committee, the executive commissioner  
4 shall attempt to include:

5           (1) representatives of the commission and other  
6 relevant state agencies;

7           (2) providers of services to persons with  
8 developmental disabilities or mental retardation;

9           (3) persons who formerly received care under this  
10 subchapter as foster children;

11           (4) persons with expertise about developmental  
12 disabilities or mental retardation;

13           (5) persons who advocate for the rights of children  
14 with developmental disabilities or mental retardation; and

15           (6) persons related to children with developmental  
16 disabilities or mental retardation.

17       (d) Chapter 2110, Government Code, does not apply to the  
18 committee.

19       (e) The commission or the department may pay any expenses  
20 incurred by the committee.

21       SECTION 1.40. Subchapter B, Chapter 264, Family Code, is  
22 amended by adding Section 264.1095 to read as follows:

23       Sec. 264.1095. CHILD SUPPORT. Unless the department has  
24 been assigned support rights under Section 264.109, the department  
25 shall file suit for child support under Section 154.001(b) for a  
26 child for whom the department has been named temporary managing  
27 conservator.

1 SECTION 1.41. (a) Subchapter B, Chapter 264, Family Code,  
2 is amended by adding Section 264.116 to read as follows:

3 Sec. 264.116. TEXAS FOSTER GRANDPARENTS PROGRAM. (a) The  
4 department shall work with volunteer and advocacy organizations  
5 from the community to develop and implement a statewide foster  
6 grandparents program that:

7 (1) recruits volunteers who are senior citizens; and

8 (2) encourages the volunteers to serve as mentors to  
9 children who reside in a residential child-care facility.

10 (b) From funds available for that purpose, the department  
11 may reimburse volunteers for actual and necessary expenses incurred  
12 while participating in the program, including travel expenses. The  
13 executive commissioner by rule shall develop guidelines for the  
14 reimbursement of expenses under the program.

15 (c) A volunteer who participates in the program is subject  
16 to state and national criminal background checks in accordance with  
17 Sections 411.087 and 411.114, Government Code.

18 (d) The department shall require foster parents or  
19 employees of residential child-care facilities to provide  
20 appropriate supervision over volunteers during their participation  
21 in the program.

22 (e) The program is subject to Chapter 2109, Government Code.

23 (b) The Department of Family and Protective Services shall  
24 implement the statewide foster grandparents program required by  
25 Section 264.116, Family Code, as added by this section, not later  
26 than June 1, 2006.

27 SECTION 1.42. Subchapter B, Chapter 264, Family Code, is

1 amended by adding Section 264.121 to read as follows:

2 Sec. 264.121. PREPARATION FOR ADULT LIVING PROGRAM.

3 (a) The department shall address the unique challenges facing  
4 foster children in the conservatorship of the department who must  
5 transition to independent living by:

6 (1) expanding efforts to improve discharge planning  
7 and increasing the availability of transitional family group  
8 decision-making to all youth age 16 or older in the department's  
9 permanent managing conservatorship;

10 (2) coordinating with the Health and Human Services  
11 Commission to obtain authority, to the extent allowed by federal  
12 law, the state Medicaid plan, the Title IV-E state plan, and any  
13 waiver or amendment to either plan, necessary to:

14 (A) extend foster care eligibility and  
15 transition services for youth up to age 21 and develop policy to  
16 permit eligible youth to return to foster care as necessary to  
17 achieve the goals of the Preparation for Adult Living Program; and

18 (B) extend Medicaid coverage for foster care  
19 youth and former foster care youth up to age 21 with a single  
20 application at the time the youth leaves foster care; and

21 (3) entering into cooperative agreements with the  
22 Texas Workforce Commission and local workforce development boards  
23 to further the objectives of the Preparation for Adult Living  
24 Program. The department, the Texas Workforce Commission, and the  
25 local workforce development boards shall ensure that services are  
26 prioritized and targeted to meet the needs of foster care and former  
27 foster care children and that such services will include, where

1 feasible, referrals for short-term stays for youth needing housing.

2 (b) In this section "local workforce development board"  
3 means a local workforce development board created under Chapter  
4 2308, Government Code.

5 SECTION 1.43. Subchapter C, Chapter 264, Family Code, is  
6 amended by adding Section 264.2015 to read as follows:

7 Sec. 264.2015. FAMILY GROUP CONFERENCING. The department  
8 may collaborate with the courts and other appropriate local  
9 entities to develop and implement family group conferencing as a  
10 strategy for promoting family preservation and permanency for  
11 children.

12 SECTION 1.44. Subchapter C, Chapter 264, Family Code, is  
13 amended by adding Section 264.204 to read as follows:

14 Sec. 264.204. COMMUNITY-BASED FAMILY SERVICES. (a) The  
15 department shall administer a grant program to provide funding to  
16 community organizations, including faith-based or county  
17 organizations, to respond to:

18 (1) low-priority, less serious cases of abuse and  
19 neglect; and

20 (2) cases in which an allegation of abuse or neglect of  
21 a child was unsubstantiated but involved a family that has been  
22 previously investigated for abuse or neglect of a child.

23 (b) The executive commissioner shall adopt rules to  
24 implement the grant program, including rules governing the  
25 submission and approval of grant requests and the cancellation of  
26 grants.

27 (c) To receive a grant, a community organization whose grant

1 request is approved must execute an interagency agreement or a  
2 contract with the department. The contract must require the  
3 organization receiving the grant to perform the services as stated  
4 in the approved grant request. The contract must contain  
5 appropriate provisions for program and fiscal monitoring.

6 (d) In areas of the state in which community organizations  
7 receive grants under the program, the department shall refer  
8 low-priority, less serious cases of abuse and neglect to a  
9 community organization receiving a grant under the program.

10 (e) A community organization receiving a referral under  
11 Subsection (d) shall make a home visit and offer family social  
12 services to enhance the parents' ability to provide a safe and  
13 stable home environment for the child. If the family chooses to use  
14 the family services, a case manager from the organization shall  
15 monitor the case and ensure that the services are delivered.

16 (f) If after the home visit the community organization  
17 determines that the case is more serious than the department  
18 indicated, the community organization shall refer the case to the  
19 department for a full investigation.

20 (g) The department may not award a grant to a community  
21 organization in an area of the state in which a similar program is  
22 already providing effective family services in the community.

23 (h) For purposes of this section, a case is considered to be  
24 a less serious case of abuse or neglect if:

25 (1) the circumstances of the case do not appear to  
26 involve a reasonable likelihood that the child will be abused or  
27 neglected in the foreseeable future; or



1           (2) the allegations in the report of child abuse or  
2 neglect:

3           (A) are general in nature or vague and do not  
4 support a determination that the child who is the subject of the  
5 report has been abused or neglected or will likely be abused or  
6 neglected; or

7           (B) if substantiated, would not be considered  
8 abuse or neglect under this chapter.

9           SECTION 1.45. (a) Subchapter C, Chapter 264, Family Code,  
10 is amended by adding Section 264.2041 to read as follows:

11           Sec. 264.2041. CULTURAL AWARENESS. The department shall:

12           (1) develop and deliver cultural competency training  
13 to all service delivery staff;

14           (2) increase targeted recruitment efforts for foster  
15 and adoptive families who can meet the needs of children and youth  
16 who are waiting for permanent homes;

17           (3) target recruitment efforts to ensure diversity  
18 among department staff; and

19           (4) develop collaborative partnerships with community  
20 groups, agencies, faith-based organizations, and other community  
21 organizations to provide culturally competent services to children  
22 and families of every race and ethnicity.

23           (b) The Health and Human Services Commission and the  
24 Department of Family and Protective Services shall analyze data  
25 regarding child removals and other enforcement actions taken by the  
26 department during state fiscal years 2004 and 2005. Based on the  
27 analysis, the commission and the department shall determine whether

1 enforcement actions were disproportionately initiated against any  
2 racial or ethnic group, in any area of the state, taking into  
3 account other relevant factors, including poverty, single-parent  
4 families, young-parent families, and any additional factor  
5 determined by other research to be statistically correlated with  
6 child abuse or child neglect.

7 (c) The rate of enforcement actions shall be deemed  
8 disproportionate for a given racial or ethnic group if it is  
9 significantly different from the rate of enforcement actions  
10 against the population as a whole, taking into account other  
11 relevant factors.

12 (d) Not later than January 1, 2006, the Health and Human  
13 Services Commission shall report the results of the analysis to the  
14 lieutenant governor, the speaker of the house of representatives,  
15 and the presiding officer of each house and senate standing  
16 committee having jurisdiction over child protective services.

17 (e) If the results of the analysis indicate that enforcement  
18 actions are initiated disproportionately against any racial or  
19 ethnic group, in any area of the state, taking into account other  
20 relevant factors, the Health and Human Services Commission and  
21 Department of Family and Protective Services shall:

22 (1) evaluate the policies and procedures the  
23 department uses in deciding to take enforcement actions to  
24 determine why racial or ethnic disparities exist;

25 (2) develop and implement a remediation plan to  
26 prevent racial or ethnic disparities not justified by other  
27 external factors from affecting the decision to initiate

1 enforcement actions; and

2 (3) not later than July 1, 2006, submit a report to the  
3 lieutenant governor, the speaker of the house of representatives,  
4 and the presiding officer of each house and senate standing  
5 committee having jurisdiction over child protective services that  
6 explains:

7 (A) the evaluation of policies and procedures;  
8 and

9 (B) the remediation plan.

10 SECTION 1.46. Subsection (c), Section 264.203, Family Code,  
11 is amended to read as follows:

12 (c) If the person ordered to participate in the services  
13 fails to follow the court's order, the court may impose appropriate  
14 sanctions in order to protect the health and safety of the child,  
15 including the removal of the child as specified by Chapter 262  
16 [community service as a sanction for contempt].

17 SECTION 1.47. Subsection (b), Section 264.502, Family Code,  
18 is amended to read as follows:

19 (b) The members of the committee who serve under Subsections  
20 (a)(1) through (3) shall select the following additional committee  
21 members:

22 (1) a criminal prosecutor involved in prosecuting  
23 crimes against children;

24 (2) a sheriff;

25 (3) a justice of the peace;

26 (4) a medical examiner;

27 (5) a police chief;

- 1 (6) a pediatrician experienced in diagnosing and  
2 treating child abuse and neglect;
- 3 (7) a child educator;
- 4 (8) a child mental health provider;
- 5 (9) a public health professional;
- 6 (10) a child protective services specialist;
- 7 (11) a sudden infant death syndrome family service  
8 provider;
- 9 (12) a neonatologist;
- 10 (13) a child advocate; ~~and~~
- 11 (14) a chief juvenile probation officer; and
- 12 (15) a child abuse prevention specialist.

13 SECTION 1.48. Section 264.503, Family Code, is amended by  
14 amending Subsections (b) through (f) and adding Subsections (d-1)  
15 and (g) to read as follows:

16 (b) To ensure that the committee achieves its purpose, the  
17 department and the ~~[Texas]~~ Department of State Health Services  
18 shall perform the duties specified by this section.

19 (c) The department shall:

20 (1) recognize the creation and participation of review  
21 teams; and

22 (2) work cooperatively with the committee and with  
23 individual child fatality review teams ~~[promote and coordinate~~  
24 ~~training to assist the review teams in carrying out their duties,~~

25 ~~[(3) assist the committee in developing model~~  
26 ~~protocols for:~~

27 ~~[(A) the reporting and investigating of child~~

1 ~~fatalities for law enforcement agencies, child protective~~  
2 ~~services, justices of the peace and medical examiners, and other~~  
3 ~~professionals involved in the investigations of child deaths,~~

4 ~~[(B) the collection of data regarding child~~  
5 ~~deaths; and~~

6 ~~[(C) the operation of the review teams; and~~

7 ~~[(4) develop and implement procedures necessary for~~  
8 ~~the operation of the committee].~~

9 (d) The Department of State Health Services ~~[department]~~  
10 shall:

11 (1) promote and coordinate training to assist the  
12 review teams in carrying out their duties;

13 (2) assist the committee in developing model protocols  
14 for:

15 (A) the reporting and investigating of child  
16 fatalities for law enforcement agencies, child protective  
17 services, justices of the peace and medical examiners, and other  
18 professionals involved in the investigations of child deaths;

19 (B) the collection of data regarding child  
20 deaths; and

21 (C) the operation of the review teams;

22 (3) develop and implement procedures necessary for the  
23 operation of the committee; and

24 (4) promote education of the public regarding the  
25 incidence and causes of child deaths, the public role in preventing  
26 child deaths, and specific steps the public can undertake to  
27 prevent child deaths.

1           (d-1) The committee shall enlist the support and assistance  
2 of civic, philanthropic, and public service organizations in the  
3 performance of the duties imposed under Subsection (d) [~~this~~  
4 ~~subsection~~].

5           (e) In addition to the duties under Subsection (d), the [~~The~~  
6 ~~Texas~~] Department of State Health Services shall:

7                   (1) collect data under this subchapter and coordinate  
8 the collection of data under this subchapter with other data  
9 collection activities; and

10                   (2) perform annual statistical studies of the  
11 incidence and causes of child fatalities using the data collected  
12 under this subchapter.

13           (f) The committee shall issue a report for each preventable  
14 child death. The report must include [~~annual reports on the~~  
15 ~~committee's activities, including~~] findings related to the child's  
16 death, [and] recommendations on how to prevent similar deaths, and  
17 details surrounding the department's involvement with the child  
18 prior to the child's death [~~relating to each purpose and duty of the~~  
19 ~~committee described by this section~~]. Not later than December 1 of  
20 each [~~even-numbered~~] year, the committee shall publish a  
21 compilation of the reports published under this subsection during  
22 the year, [the report and] submit a copy of the compilation [~~report~~]  
23 to the governor, lieutenant governor, [and] speaker of the house of  
24 representatives, and department, and make the compilation  
25 available to the public. Not later than June 1 of each year, the  
26 department shall submit a written response on the compilation from  
27 the previous year to the committee, governor, lieutenant governor,

1 and speaker of the house of representatives describing which of the  
2 committee's recommendations regarding the operation of the child  
3 protective services system the department will implement and the  
4 methods of implementation.

5 (g) The committee shall perform the functions and duties  
6 required of a citizen review panel under 42 U.S.C. Section  
7 5106a(c)(4)(A).

8 SECTION 1.49. Subsection (c), Section 264.504, Family Code,  
9 is amended to read as follows:

10 (c) Information identifying a deceased child, a member of  
11 the child's family, a guardian or caretaker of the child, or an  
12 alleged or suspected perpetrator of abuse or neglect of the child  
13 may not be disclosed during a public meeting. On a majority vote of  
14 the committee members, the members shall remove from the committee  
15 any member who discloses information described by this subsection  
16 in a public meeting.

17 SECTION 1.50. Subsection (c), Section 264.505, Family Code,  
18 is amended to read as follows:

19 (c) A review team may include:

20 (1) a criminal prosecutor involved in prosecuting  
21 crimes against children;

22 (2) a sheriff;

23 (3) a justice of the peace or medical examiner;

24 (4) a police chief;

25 (5) a pediatrician experienced in diagnosing and  
26 treating child abuse and neglect;

27 (6) a child educator;

- 1 (7) a child mental health provider;
- 2 (8) a public health professional;
- 3 (9) a child protective services specialist;
- 4 (10) a sudden infant death syndrome family service  
5 provider;
- 6 (11) a neonatologist;
- 7 (12) a child advocate; ~~and~~
- 8 (13) a chief juvenile probation officer; and
- 9 (14) a child abuse prevention specialist.

10 SECTION 1.51. Section 264.506, Family Code, is amended by  
11 amending Subsection (b) and adding Subsection (d) to read as  
12 follows:

- 13 (b) To achieve its purpose, a review team shall:
  - 14 (1) adapt and implement, according to local needs and  
15 resources, the model protocols developed by the department and the  
16 committee;
  - 17 (2) meet on a regular basis at least quarterly to  
18 review child fatality cases and recommend methods to improve  
19 coordination of services and investigations between agencies that  
20 are represented on the team;
  - 21 (3) collect and maintain data as required by the  
22 committee; and
  - 23 (4) submit to the bureau of vital statistics data  
24 reports on deaths reviewed as specified by the committee.
- 25 (d) A review team shall perform the functions and duties  
26 required of a citizen review panel under 42 U.S.C. Section  
27 5106a(c)(4)(A).



1 SECTION 1.52. Subsection (b), Section 264.509, Family Code,  
2 is amended to read as follows:

3 (b) On request of the presiding officer of a review team,  
4 the custodian of the relevant information and records relating to a  
5 deceased child shall provide those records to the review team at no  
6 cost to the review team.

7 SECTION 1.53. Subsection (c), Section 264.511, Family Code,  
8 is amended to read as follows:

9 (c) A member of a review team may not disclose any  
10 information that is confidential under this section. On a majority  
11 vote of the review team members, the members shall remove from the  
12 review team any member who discloses confidential information.

13 SECTION 1.54. Section 264.602, Family Code, is amended by  
14 adding Subsection (e) to read as follows:

15 (e) The department, in cooperation with the statewide  
16 organization with which the attorney general contracts under  
17 Section 264.603 and other interested agencies, shall support the  
18 expansion of court-appointed volunteer advocate programs into  
19 counties in which there is a need for the programs. In expanding  
20 into a county, a program shall work to ensure the independence of  
21 the program, to the extent possible, by establishing community  
22 support and accessing private funding from the community for the  
23 program.

24 SECTION 1.55. (a) Chapter 264, Family Code, is amended by  
25 adding Subchapter I to read as follows:

1 SUBCHAPTER I. RELATIVE AND OTHER DESIGNATED CAREGIVER PLACEMENT

2 PROGRAM

3 Sec. 264.751. DEFINITIONS. In this subchapter:

4 (1) "Designated caregiver" means an individual who has  
5 a longstanding and significant relationship with a child for whom  
6 the department has been appointed managing conservator and who:

7 (A) is appointed to provide substitute care for  
8 the child, but is not licensed or certified to operate a foster  
9 home, foster group home, agency foster home, or agency foster group  
10 home under Chapter 42, Human Resources Code; or

11 (B) is subsequently appointed permanent managing  
12 conservator of the child after providing the care described by  
13 Paragraph (A).

14 (2) "Relative" means a person related to a child by  
15 consanguinity as determined under Section 573.022, Government  
16 Code.

17 (3) "Relative caregiver" means a relative who:

18 (A) provides substitute care for a child for whom  
19 the department has been appointed managing conservator, but who is  
20 not licensed or certified to operate a foster home, foster group  
21 home, agency foster home, or agency foster group home under Chapter  
22 42, Human Resources Code; or

23 (B) is subsequently appointed permanent managing  
24 conservator of the child after providing the care described by  
25 Paragraph (A).

26 Sec. 264.752. RELATIVE AND OTHER DESIGNATED CAREGIVER  
27 PLACEMENT PROGRAM. (a) The department shall develop and

1 administer a program to:

2 (1) promote continuity and stability for children for  
3 whom the department is appointed managing conservator by placing  
4 those children with relative or other designated caregivers; and

5 (2) facilitate relative or other designated caregiver  
6 placements by providing assistance and services to those caregivers  
7 in accordance with this subchapter and rules adopted by the  
8 executive commissioner.

9 (b) The executive commissioner shall adopt rules necessary  
10 to implement this subchapter. The rules must include eligibility  
11 criteria for receiving assistance and services under this  
12 subchapter.

13 Sec. 264.753. EXPEDITED PLACEMENT. The department shall  
14 expedite the completion of the background and criminal history  
15 check, the home study, and any other administrative procedure to  
16 ensure that the child is placed with a qualified relative or  
17 caregiver not later than two weeks after the date the caregiver is  
18 identified.

19 Sec. 264.754. INVESTIGATION OF PROPOSED PLACEMENT. Before  
20 placing a child with a proposed relative or other designated  
21 caregiver, the department must conduct an investigation to  
22 determine whether the proposed placement is in the child's best  
23 interest.

24 Sec. 264.755. CAREGIVER ASSISTANCE AGREEMENT. The  
25 department shall, subject to the availability of funds, enter into  
26 a caregiver assistance agreement with each relative or other  
27 designated caregiver to provide monetary assistance and additional

1 support services to the caregiver. The monetary assistance and  
2 support services may include:

3 (1) a one-time cash payment of not more than \$1,000 to  
4 the caregiver on the initial placement of a child or, if the child  
5 and at least one of the child's siblings are placed with the  
6 caregiver, a one-time cash payment of not more than \$1,000 to the  
7 caregiver on the initial placement of the sibling group, to assist  
8 the caregiver in purchasing essential child-care items such as  
9 furniture and clothing;

10 (2) case management services and training and  
11 information about the child's needs until the caregiver is  
12 appointed permanent managing conservator;

13 (3) referrals to appropriate state agencies  
14 administering public benefits or assistance programs for which the  
15 child, the caregiver, or the caregiver's family may qualify;

16 (4) family counseling not provided under the Medicaid  
17 program for the caregiver's family for a period not to exceed two  
18 years from the date of initial placement;

19 (5) if the caregiver meets the eligibility criteria  
20 determined by rules adopted by the executive commissioner,  
21 reimbursement of all child-care expenses incurred while the child  
22 is under 13 years of age, or under 18 years of age if the child has a  
23 developmental disability, and while the department is the child's  
24 managing conservator;

25 (6) if the caregiver meets the eligibility criteria  
26 determined by rules adopted by the executive commissioner,  
27 reimbursement of 50 percent of child-care expenses incurred after

1 the caregiver is appointed permanent managing conservator of the  
2 child while the child is under 13 years of age, or under 18 years of  
3 age if the child has a developmental disability; and

4 (7) reimbursement of other expenses, as determined by  
5 rules adopted by the executive commissioner, not to exceed \$500 per  
6 year for each child.

7 Sec. 264.756. ASSISTANCE WITH PERMANENT PLACEMENT. The  
8 department shall collaborate with the State Bar of Texas and local  
9 community partners to identify legal resources to assist relatives  
10 and other designated caregivers in obtaining conservatorship,  
11 adoption, or other permanent legal status for the child.

12 Sec. 264.757. COORDINATION WITH OTHER AGENCIES. The  
13 department shall coordinate with other health and human services  
14 agencies, as defined by Section 531.001, Government Code, to  
15 provide assistance and services under this subchapter.

16 Sec. 264.758. FUNDS. The department and other state  
17 agencies shall actively seek and use federal funds available for  
18 the purposes of this subchapter.

19 (b) Not later than December 1, 2005, the executive  
20 commissioner of the Health and Human Services Commission shall  
21 adopt rules for implementing and administering the relative and  
22 other designated caregiver placement program under Subchapter I,  
23 Chapter 264, Family Code, as added by this section.

24 (c) Not later than March 1, 2006, the Department of Family  
25 and Protective Services shall implement the relative and other  
26 designated caregiver placement program in accordance with  
27 Subchapter I, Chapter 264, Family Code, as added by this section.

1 SECTION 1.56. Subtitle E, Title 5, Family Code, is amended  
2 by adding Chapter 266 to read as follows:

3 CHAPTER 266. MEDICAL CARE FOR CHILDREN IN FOSTER CARE

4 Sec. 266.001. DEFINITIONS. In this chapter:

5 (1) "Commission" means the Health and Human Services  
6 Commission.

7 (2) "Department" means the Department of Family and  
8 Protective Services.

9 Sec. 266.002. CONSTRUCTION WITH OTHER LAW. This chapter  
10 does not limit the right to consent to medical, dental,  
11 psychological, and surgical treatment under Chapter 32.

12 Sec. 266.003. CONSENT FOR MEDICAL CARE. (a) Medical care  
13 may not be provided to a child in foster care unless the person  
14 authorized by this section has provided informed consent.

15 (b) The following persons may be authorized by the court to  
16 consent to medical care for a child in foster care:

17 (1) an individual designated by name in an order of the  
18 court, including the child's parent, if the parent's rights have not  
19 been terminated; or

20 (2) the department or an agent of the department,  
21 including a foster parent.

22 (c) If the person authorized to consent to medical care is  
23 the department or an agent of the department, the department shall  
24 file with the court the name of the individual who will exercise the  
25 duty and responsibility of providing informed consent on behalf of  
26 the department. If the individual who exercises the duty and  
27 responsibility of providing informed consent on behalf of the

1 department changes, the department shall file notice of the change  
2 with the court not later than the 10th day after the date the change  
3 occurs.

4 (d) A physician or other provider of medical care acting in  
5 good faith may rely on the representation by a person that the  
6 person has the authority to consent to the provision of medical care  
7 to a child in foster care as provided by Subsection (b).

8 (e) The department, a person authorized to consent to  
9 medical care under Subsection (b), the child's parent if the  
10 parent's rights have not been terminated, a guardian ad litem or  
11 attorney ad litem if one has been appointed, or the person providing  
12 foster care to the child may petition the court for any order  
13 related to medical care of a child in foster care that the  
14 department or other person believes is in the best interest of the  
15 child. Notice of the petition must be given to each person entitled  
16 to notice under Section 263.301(b).

17 (f) On its own motion or in response to a petition under  
18 Subsection (e), the court may issue any order related to the medical  
19 care of a child in foster care that the court determines is in the  
20 best interest of the child.

21 (g) Notwithstanding Subsection (b), a person may not be  
22 authorized to consent to medical care provided to a child in foster  
23 care unless the person has completed a department-approved training  
24 program related to consenting to medical care. This subsection  
25 does not apply to a parent whose rights have not been terminated  
26 unless the court orders the parent to complete the training.

27 (h) The person authorized by Subsection (b) to consent to

1 medical care of a child in foster care shall participate in each  
2 appointment of the child with the provider of the medical care.

3 Sec. 266.004. HEALTH PASSPORTS. (a) The commission shall  
4 make available to the person authorized to consent to medical care  
5 under Section 266.003(b) and any provider of health care to a child  
6 in foster care the most complete health history of the child  
7 available to the department.

8 (b) The department shall develop a health passport for each  
9 child in foster care. The department shall determine the format of  
10 the passport. The passport may be maintained in an electronic  
11 format. The health passport must include the most complete medical  
12 history of the child available to the department and must be readily  
13 accessible to medical care providers. The health passport must  
14 contain educational records of the child, including the names and  
15 addresses of educational providers, the child's grade level  
16 performance, and any other educational information the department  
17 determines is important.

18 (c) The form and content of the passport shall be finalized  
19 within six months of the enactment of the legislation adding this  
20 chapter. The passport shall be available in an electronic format  
21 within 24 months of the enactment of this legislation. Within 36  
22 months, the passport shall interface directly with other electronic  
23 health record systems that contain information that impacts the  
24 health care of the child.

25 (d) The department shall maintain the passport as part of  
26 the department's records for the child as long as the child remains  
27 in foster care.



1       Sec. 266.005. JUDICIAL REVIEW OF MEDICAL CARE. (a) At  
2 each hearing under Chapter 263, or more frequently if ordered by the  
3 court, the court shall review a summary of the medical care provided  
4 to the child since the last hearing. The summary must include  
5 information regarding:

6           (1) the nature of any emergency medical care provided  
7 to the child and the circumstances necessitating emergency medical  
8 care, including any injury or acute illness suffered by the child;

9           (2) any medication prescribed for the child and the  
10 condition for which the medication was prescribed;

11           (3) the degree to which the child or foster care  
12 provider has complied or failed to comply with any plan of medical  
13 treatment for the child;

14           (4) any adverse reaction to or side effects of any  
15 medical treatment provided to the child;

16           (5) any specific medical condition of the child that  
17 has been diagnosed or for which tests are being conducted to make a  
18 diagnosis;

19           (6) any activity that the child should avoid or should  
20 engage in that might affect the effectiveness of the treatment,  
21 including physical activities, other medications, and diet; and

22           (7) other information required by department rule or  
23 by the court.

24       (b) At or before each hearing under Chapter 263, the  
25 department shall provide the summary of medical care described by  
26 Subsection (a) to:

27           (1) the court;

1           (2) the person authorized to consent to medical  
2 treatment for the child;

3           (3) the guardian ad litem or attorney ad litem, if one  
4 has been appointed by the court;

5           (4) the child's parent, if the parent's rights have not  
6 been terminated; and

7           (5) any other person determined by the department or  
8 the court to be necessary or convenient to the provision of medical  
9 care to children in foster care.

10           Sec. 266.006. OVERSIGHT OF MEDICAL CARE. (a) The  
11 commission shall establish a comprehensive system of oversight of  
12 medical care provided to children in foster care.

13           (b) The oversight system must include:

14           (1) the implementation of medical passports by which  
15 each foster child's full medical history available to the  
16 department is available at all times to the person authorized to  
17 consent to medical care for the child and to each provider of  
18 medical care who diagnoses or treats the child;

19           (2) establishment and use of a management information  
20 system that allows medical care provided to all children in foster  
21 care to be monitored;

22           (3) the use of medical advisory committees and medical  
23 review teams to establish treatment guidelines and criteria by  
24 which individual cases of medical care provided to children in  
25 foster care will be identified for further, in-depth review;

26           (4) development of the training program described by  
27 Section 266.003(g);

1           (5) a system in which parents, foster parents,  
2 caseworkers, and guardians ad litem have access to a child  
3 psychiatrist employed by the department or the Department of State  
4 Health Services to use as a resource for treating foster children;

5           (6) provision for the summary of medical treatment  
6 described by Section 266.005(a); and

7           (7) provision for the participation of the person  
8 authorized to consent to medical care for a child in foster care in  
9 each appointment of the child with the provider of the medical care.

10          Sec. 266.0061. STUDY OF INCENTIVES TO PRESCRIBE  
11 PSYCHOTROPIC DRUGS. (a) The department shall study the level of  
12 care system the department uses to determine a child's foster care  
13 needs to ascertain whether the system creates incentives for  
14 prescribing psychotropic medications to children in foster care.

15          (b) Not later than October 1, 2006, the department shall  
16 report the results of the study to the legislature. The report must  
17 include the department's proposed changes to the level of care  
18 system.

19          (c) This section expires January 1, 2007.

20          SECTION 1.57. Section 51.961, Government Code, is amended  
21 to read as follows:

22          Sec. 51.961. FAMILY PROTECTION FEE. (a) The commissioners  
23 court of a county shall [~~may~~] adopt a family protection fee in an  
24 amount not to exceed \$30 [~~\$15~~].

25          (b) Except as provided by Subsection (c), the district clerk  
26 or county clerk shall collect the family protection fee at the time  
27 a suit for dissolution of a marriage under Chapter 6, Family Code,

1 is filed. The fee is in addition to any other fee collected by the  
2 district clerk or county clerk.

3 (c) The clerk may not collect a fee under this section from a  
4 person who is protected by an order issued under:

5 (1) Subtitle B, Title 4, Family Code; or

6 (2) Article 17.292, Code of Criminal Procedure.

7 (d) The clerk shall pay one-half of the [a] fee collected  
8 under this section to the appropriate officer of the county in which  
9 the suit is filed for deposit in the county treasury to the credit  
10 of the family protection account. The account may be used by the  
11 commissioners court of the county only to fund a service provider  
12 located in that county or an adjacent county. The commissioners  
13 court may provide funding to a nonprofit organization that provides  
14 services described by Subsection (e).

15 (e) A service provider who receives funds under Subsection  
16 (d) may provide family violence and child abuse prevention,  
17 intervention, family strengthening, mental health, counseling,  
18 legal, and marriage preservation services to families that are at  
19 risk of experiencing or that have experienced family violence or  
20 the abuse or neglect of a child.

21 (f) In this section, "family violence" has the meaning  
22 assigned by Section 71.004, Family Code.

23 (g) The clerk shall pay one-half of the fee collected under  
24 this section to the comptroller, who shall deposit the money to the  
25 credit of the child abuse and neglect prevention trust fund account  
26 established under Section 40.105, Human Resources Code.

27 SECTION 1.58. Section 101.061, Government Code, is amended

1 to read as follows:

2           Sec. 101.061. DISTRICT COURT FEES AND COSTS. The clerk of a  
3 district court shall collect fees and costs as follows:

4           (1) filing fee in action with respect to a fraudulent  
5 court record or fraudulent lien or claim filed against property  
6 (Sec. 12.005, Civil Practice and Remedies Code) . . . \$15;

7           (2) fee for service of notice of action with respect to  
8 a fraudulent court record or fraudulent lien or claim filed against  
9 property (Sec. 12.005, Civil Practice and Remedies Code) . . . not  
10 to exceed \$20, if notice delivered in person, or the cost of  
11 postage, if service is by registered or certified mail;

12           (3) court cost in certain civil cases to establish and  
13 maintain an alternative dispute resolution system, if authorized by  
14 the county commissioners court (Sec. 152.004, Civil Practice and  
15 Remedies Code) . . . not to exceed \$10;

16           (4) appellate judicial system filing fees for:

17           (A) First or Fourteenth Court of Appeals District  
18 (Sec. 22.2021, Government Code) . . . not more than \$5;

19           (B) Second Court of Appeals District (Sec.  
20 22.2031, Government Code) . . . not more than \$5;

21           (C) Fourth Court of Appeals District (Sec.  
22 22.2051, Government Code) . . . not more than \$5;

23           (D) Fifth Court of Appeals District (Sec.  
24 22.2061, Government Code) . . . not more than \$5; and

25           (E) Thirteenth Court of Appeals District (Sec.  
26 22.2141, Government Code) . . . not more than \$5;

27           (5) additional filing fees:

1 (A) for each suit filed for insurance contingency  
2 fund, if authorized by the county commissioners court (Sec. 51.302,  
3 Government Code) . . . not to exceed \$5;

4 (B) for each civil suit filed, for court-related  
5 purposes for the support of the judiciary and for civil legal  
6 services to an indigent:

7 (i) for family law cases and proceedings as  
8 defined by Section 25.0002, Government Code (Sec. 133.151, Local  
9 Government Code) . . . \$45; or

10 (ii) for any case other than a case  
11 described by Subparagraph (i) (Sec. 133.151, Local Government  
12 Code) . . . \$50;

13 (C) to fund the improvement of Dallas County  
14 civil court facilities, if authorized by the county commissioners  
15 court (Sec. 51.705, Government Code) . . . not more than \$15; and

16 (D) on the filing of any civil action or  
17 proceeding requiring a filing fee, including an appeal, and on the  
18 filing of any counterclaim, cross-action, intervention,  
19 interpleader, or third-party action requiring a filing fee, to fund  
20 civil legal services for the indigent:

21 (i) for family law cases and proceedings as  
22 defined by Section 25.0002, Government Code (Sec. 133.152, Local  
23 Government Code) . . . \$5; or

24 (ii) for any case other than a case  
25 described by Subparagraph (i) (Sec. 133.152, Local Government  
26 Code) . . . \$10;

27 (6) for filing a suit, including an appeal from an

1 inferior court:

2 (A) for a suit with 10 or fewer plaintiffs (Sec.  
3 51.317, Government Code) . . . \$50;

4 (B) for a suit with at least 11 but not more than  
5 25 plaintiffs (Sec. 51.317, Government Code) . . . \$75;

6 (C) for a suit with at least 26 but not more than  
7 100 plaintiffs (Sec. 51.317, Government Code) . . . \$100;

8 (D) for a suit with at least 101 but not more than  
9 500 plaintiffs (Sec. 51.317, Government Code) . . . \$125;

10 (E) for a suit with at least 501 but not more than  
11 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$150; or

12 (F) for a suit with more than 1,000 plaintiffs  
13 (Sec. 51.317, Government Code) . . . \$200;

14 (7) for filing a cross-action, counterclaim,  
15 intervention, contempt action, motion for new trial, or third-party  
16 petition (Sec. 51.317, Government Code) . . . \$15;

17 (8) for issuing a citation or other writ or process not  
18 otherwise provided for, including one copy, when requested at the  
19 time a suit or action is filed (Sec. 51.317, Government Code) . . .  
20 \$8;

21 (9) for records management and preservation (Sec.  
22 51.317, Government Code) . . . \$10;

23 (10) for issuing a subpoena, including one copy (Sec.  
24 51.318, Government Code) . . . \$8;

25 (11) for issuing a citation, commission for  
26 deposition, writ of execution, order of sale, writ of execution and  
27 order of sale, writ of injunction, writ of garnishment, writ of

1 attachment, or writ of sequestration not provided for in Section  
2 51.317, or any other writ or process not otherwise provided for,  
3 including one copy if required by law (Sec. 51.318, Government  
4 Code) . . . \$8;

5 (12) for searching files or records to locate a cause  
6 when the docket number is not provided (Sec. 51.318, Government  
7 Code) . . . \$5;

8 (13) for searching files or records to ascertain the  
9 existence of an instrument or record in the district clerk's office  
10 (Sec. 51.318, Government Code) . . . \$5;

11 (14) for abstracting a judgment (Sec. 51.318,  
12 Government Code) . . . \$8;

13 (15) for approving a bond (Sec. 51.318, Government  
14 Code) . . . \$4;

15 (16) for a certified copy of a record, judgment,  
16 order, pleading, or paper on file or of record in the district  
17 clerk's office, including certificate and seal, for each page or  
18 part of a page (Sec. 51.318, Government Code) . . . \$1;

19 (17) for a noncertified copy, for each page or part of  
20 a page (Sec. 51.318, Government Code) . . . not to exceed \$1;

21 (18) jury fee (Sec. 51.604, Government Code) . . .  
22 \$30;

23 (19) for filing a report of divorce or annulment (Sec.  
24 194.002, Health and Safety Code) . . . \$1;

25 (20) for filing a suit in Comal County (Sec. 152.0522,  
26 Human Resources Code) . . . \$4;

27 (21) additional filing fee for family protection on



1 filing a suit for dissolution of a marriage under Chapter 6, Family  
2 Code, if authorized by the county commissioners court (Sec. 51.961,  
3 Government Code) . . . not to exceed \$30 [~~\$15~~];

4 (22) fee on filing a suit for dissolution of a marriage  
5 for services of child support department in Harris County, if  
6 authorized by the county commissioners court (Sec. 152.1074, Human  
7 Resources Code) . . . not to exceed \$12;

8 (23) fee on filing a suit requesting an adoption in  
9 Montague County (Sec. 152.1752, Human Resources Code) . . . \$25;

10 (24) court cost on citation for contempt of court for  
11 failure to comply with child support order in Nueces County, if  
12 authorized by the commissioners court (Sec. 152.1844, Human  
13 Resources Code) . . . not to exceed \$10;

14 (25) fee on filing a suit for divorce in Orange County  
15 (Sec. 152.1873, Human Resources Code) . . . not less than \$5;

16 (26) court costs on citation for contempt of court in  
17 Orange County for failure to comply with a child support order or  
18 order providing for possession of or access to a child (Sec.  
19 152.1873, Human Resources Code) . . . amount determined by  
20 district clerk;

21 (27) fee on filing a suit requesting an adoption in  
22 Orange County (Sec. 152.1874, Human Resources Code) . . . not less  
23 than \$25;

24 (28) fee on filing a suit requesting an adoption in  
25 Wichita County (Sec. 152.2496, Human Resources Code) . . . \$100;

26 (29) additional filing fee to fund the courthouse  
27 security fund, if authorized by the county commissioners court

1 (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

2 (30) additional filing fee for filing documents not  
3 subject to certain filing fees to fund the courthouse security  
4 fund, if authorized by the county commissioners court (Sec.  
5 291.008, Local Government Code) . . . \$1;

6 (31) additional filing fee to fund the courthouse  
7 security fund in Webb County, if authorized by the county  
8 commissioners court (Sec. 291.009, Local Government Code) . . .  
9 not to exceed \$20;

10 (32) court cost in civil cases other than suits for  
11 delinquent taxes to fund the county law library fund, if authorized  
12 by the county commissioners court (Sec. 323.023, Local Government  
13 Code) . . . not to exceed \$35;

14 (33) when administering a case for the Rockwall County  
15 Court at Law (Sec. 25.2012, Government Code) . . . civil fees and  
16 court costs as if the case had been filed in district court;

17 (34) at a hearing held by an associate judge in Dallas  
18 County, a court cost to preserve the record, in the absence of a  
19 court reporter, by other means (Sec. 54.509, Government Code) . . .  
20 as assessed by the referring court or associate judge; and

21 (35) at a hearing held by an associate judge in Duval  
22 County, a court cost to preserve the record (Sec. 54.1151,  
23 Government Code, as added by Chapter 1150, Acts of the 78th  
24 Legislature, Regular Session, 2003) . . . as imposed by the  
25 referring court or associate judge.

26 SECTION 1.59. Subdivision (2), Subsection (a), Section  
27 411.114, Government Code, is amended to read as follows:

1           (2) The Department of Family and Protective [~~and~~  
2 ~~Regulatory~~] Services shall obtain from the department criminal  
3 history record information maintained by the department that  
4 relates to a person who is:

5           (A) an applicant for a license, registration,  
6 certification, or listing under Chapter 42, Human Resources Code,  
7 or Chapter 249, Health and Safety Code[~~, or a person who registers~~  
8 ~~with or has been issued a certificate to operate under~~  
9 ~~accreditation by the Department of Protective and Regulatory~~  
10 ~~Services under Subchapter E, Chapter 42, Human Resources Code];~~

11           (B) an owner, operator, or employee of or an  
12 applicant for employment by a child-care facility, child-placing  
13 agency, family home, or maternity home licensed, registered,  
14 certified, or listed under Chapter 42, Human Resources Code, or  
15 Chapter 249, Health and Safety Code[~~, or by a child-care facility or~~  
16 ~~child-placing agency that is seeking to register with or has been~~  
17 ~~issued a certificate to operate under accreditation by the~~  
18 ~~Department of Protective and Regulatory Services under Subchapter~~  
19 ~~E, Chapter 42, Human Resources Code];~~

20           (C) a person 14 years of age or older who will be  
21 regularly or frequently working or staying in a child-care  
22 facility, family home, or maternity home while children are being  
23 provided care, other than a child in the care of the home or  
24 facility;

25           (D) an applicant selected for a position with the  
26 Department of Family and Protective [~~and Regulatory~~] Services, the  
27 duties of which include direct delivery of protective services to

1 children, elderly persons, or persons with a disability;

2 (E) an employee of, an applicant for employment  
3 with, or a volunteer or an applicant volunteer with a business  
4 entity or person that contracts with the Department of Family and  
5 Protective [~~and Regulatory~~] Services to provide direct delivery of  
6 protective services to children, elderly persons, or persons with a  
7 disability, if the person's duties or responsibilities include  
8 direct contact with children, elderly persons, or persons with a  
9 disability;

10 (F) a registered volunteer with the Department of  
11 Family and Protective [~~and Regulatory~~] Services;

12 (G) a person providing or applying to provide  
13 in-home, adoptive, or foster care for children in the care of the  
14 Department of Family and Protective [~~and Regulatory~~] Services and  
15 other persons living in the residence in which the child will  
16 reside;

17 (H) a Department of Family and Protective [~~and~~  
18 ~~Regulatory~~] Services employee who is engaged in the direct delivery  
19 of protective services to children, elderly persons, or persons  
20 with a disability;

21 (I) a person who is the subject of a report the  
22 Department of Family and Protective [~~and Regulatory~~] Services  
23 receives alleging that the person has abused, neglected, or  
24 exploited a child, an elderly person, or a person with a disability,  
25 provided that:

26 (i) the report alleges the person has  
27 engaged in conduct that meets the statutory definition of abuse,

1 neglect, or exploitation under Chapter 261, Family Code, or Chapter  
2 48, Human Resources Code; and

3 (ii) the person who is the subject of the  
4 report is not also the victim of the alleged conduct;

5 (J) a person providing child care for a child who  
6 is in the care of the Department of Family and Protective [~~and~~  
7 ~~Regulatory~~] Services and who is or will be receiving adoptive,  
8 foster, or in-home care;

9 (K) through a contract with a nonprofit  
10 management center, an employee of, an applicant for employment  
11 with, or a volunteer or an applicant volunteer with a nonprofit,  
12 tax-exempt organization that provides any service that involves the  
13 care of or access to children, elderly persons, or persons with a  
14 disability; or

15 (L) an applicant for a child-care administrator  
16 or child-placing agency administrator license under Chapter 43  
17 [seeking accreditation as provided by Section 43.003], Human  
18 Resources Code.

19 SECTION 1.60. (a) Subchapter B, Chapter 531, Government  
20 Code, is amended by adding Section 531.078 to read as follows:

21 Sec. 531.078. POOLED FUNDING FOR FOSTER CARE PREVENTIVE  
22 SERVICES. (a) The commission and the Department of Family and  
23 Protective Services shall develop and implement a plan to combine,  
24 to the extent and in the manner allowed by Section 51, Article III,  
25 Texas Constitution, and other applicable law, funds of those  
26 agencies with funds of other appropriate state agencies and local  
27 governmental entities to provide services designed to prevent

1 children from being placed in foster care. The preventive services  
2 may include:

- 3 (1) child and family counseling;
- 4 (2) instruction in parenting and homemaking skills;
- 5 (3) parental support services;
- 6 (4) temporary respite care; and
- 7 (5) crisis services.

8 (b) The plan must provide for:

9 (1) state funding to be distributed to other state  
10 agencies, local governmental entities, or private entities only as  
11 specifically directed by the terms of a grant or contract to provide  
12 preventive services;

13 (2) procedures to ensure that funds received by the  
14 commission by gift, grant, or interagency or interlocal contract  
15 from another state agency, a local governmental entity, the federal  
16 government, or any other public or private source for purposes of  
17 this section are disbursed in accordance with the terms under which  
18 the commission received the funds; and

19 (3) a reporting mechanism to ensure appropriate use of  
20 funds.

21 (c) For the purposes of this section, the commission may  
22 request and accept gifts and grants under the terms of a gift,  
23 grant, or contract from a local governmental entity, a private  
24 entity, or any other public or private source for use in providing  
25 services designed to prevent children from being placed in foster  
26 care. If required by the terms of a gift, grant, or contract or by  
27 applicable law, the commission shall use the amounts received:

1           (1) from a local governmental entity to provide the  
2 services in the geographic area of this state in which the entity is  
3 located; and

4           (2) from the federal government or a private entity to  
5 provide the services statewide or in a particular geographic area  
6 of this state.

7           (b) Not later than November 1, 2006, the Health and Human  
8 Services Commission shall provide to the governor and the  
9 Legislative Budget Board a report on the status and progress of the  
10 preventive services funding plan required by Section 531.078,  
11 Government Code, as added by this section.

12           SECTION 1.61. Section 651.004, Government Code, is amended  
13 by adding Subsection (e) to read as follows:

14           (e) The Department of Family and Protective Services is not  
15 required to comply with management-to-staff ratio requirements of  
16 this section with respect to caseworker supervisors, program  
17 directors, and program administrators.

18           SECTION 1.62. (a) Subchapter C, Chapter 2155, Government  
19 Code, is amended by adding Section 2155.1442 to read as follows:

20           Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACT  
21 MANAGEMENT. (a) Subject to Subsection (d), the state auditor  
22 shall conduct a management review of the residential contract  
23 management employees of the Health and Human Services Commission  
24 and the Department of Family and Protective Services and make  
25 recommendations regarding the organization of, and skills and  
26 educational requirements for, those employees. The state auditor  
27 shall also make recommendations regarding the implementation of

1 financial accountability provisions and processes to ensure  
2 effective and efficient expenditure of state and other contract  
3 funds. The state auditor shall report annually to the governor, the  
4 lieutenant governor, the speaker of the house of representatives,  
5 and the comptroller on the auditor's recommendations and the  
6 commission's and department's implementation of each  
7 recommendation.

8 (b) The Health and Human Services Commission shall contract  
9 with the state auditor to perform on-site financial audits of  
10 selected contractors as needed subject to approval by the  
11 legislative audit committee for inclusion in the annual audit plan  
12 under Section 321.013. The state auditor, with input from the  
13 Health and Human Services Commission, shall select the contractors  
14 based on the contract's risk assessment rating, allegations of  
15 fraud or misuse of state or other contract funds, or other  
16 appropriate audit selection criteria. The state auditor shall  
17 include findings from the on-site financial audits in the annual  
18 report to the governor and other representatives of the state as  
19 required by Subsection (a). In addition, the state auditor shall  
20 immediately report to the governor and each person listed in  
21 Subsection (a) any findings of fraud or other misuse of state or  
22 other contract funds.

23 (c) The Department of Family and Protective Services may  
24 develop an Internet-based system to enable residential contractors  
25 to review their reimbursement accounts or other pertinent financial  
26 data and reconcile their accounts.

27 (d) Work performed under Subsections (a) and (b) by the



1 state auditor is subject to approval by the legislative audit  
2 committee for inclusion in the audit plan under Section 321.013(c).

3 (b) Section 2155.1442, Government Code, as added by this  
4 section, applies only to a contract that is entered into or renewed  
5 on or after the effective date of this section. A contract entered  
6 into or renewed before that date is governed by the law in effect on  
7 the date the contract is entered into or renewed, and the former law  
8 is continued in effect for that purpose.

9 (c) Not later than December 1, 2005, the state auditor shall  
10 complete and publish the management review and report required by  
11 Subsection (a), Section 2155.1442, Government Code, as added by  
12 this section. This subsection applies only if the auditor's work is  
13 approved by the legislative audit committee in time to meet this  
14 deadline.

15 (d) Not later than October 1, 2006, the state auditor shall  
16 begin the on-site financial reviews of selected contractors  
17 required by Subsection (b), Section 2155.1442, Government Code, as  
18 added by this section.

19 SECTION 1.63. (a) Section 32.055, Human Resources Code, is  
20 amended to read as follows:

21 Sec. 32.055. CATASTROPHIC CASE MANAGEMENT. (a) In this  
22 section, "medically fragile child" means a child who:

23 (1) is under 21 years of age;

24 (2) has a serious, chronic illness or condition that:

25 (A) has continued, or is anticipated to continue,  
26 at least 12 months;

27 (B) requires daily hospitalization or has

1 required at least one month of hospitalization;

2 (C) requires ongoing medical treatment and  
3 monitoring by appropriately trained personnel, including a parent  
4 or other family member; and

5 (D) presents an ongoing threat to the child's  
6 well-being; and

7 (3) requires the routine use of a medical device or the  
8 use of assistive technology to compensate for the loss of a bodily  
9 function necessary to participate in an activity of daily life.

10 (b) The department shall develop and implement a  
11 catastrophic case management system to be used in providing medical  
12 assistance to persons with catastrophic health problems, including  
13 medically fragile children under the conservatorship of the  
14 Department of Family and Protective Services who are placed in  
15 foster care.

16 (c) [~~(b)~~] The system must provide for the assignment of a  
17 case manager to a recipient of medical assistance with catastrophic  
18 health problems that are likely to:

19 (1) require the services of multiple, specialized  
20 health care providers; and

21 (2) result in major medical costs.

22 (d) [~~(c)~~] The department shall identify the services to be  
23 provided by a case manager assigned under the system. The services  
24 must include assessment of the recipient's needs and coordination  
25 of all available medical services and payment options. The  
26 services may include other support services such as:

27 (1) assistance with making arrangements to receive

1 care from medical facilities;

2 (2) assistance with travel and lodging in connection  
3 with receipt of medical care;

4 (3) education of the recipient and the recipient's  
5 family members or foster parent, as applicable, regarding the  
6 nature of the recipient's health problems;

7 (4) referral to appropriate support groups; and

8 (5) any other service likely to result in better care  
9 provided in a cost-effective manner.

10 (e) In implementing the system for medically fragile  
11 children, the department shall coordinate with the Department of  
12 Family and Protective Services and may contract with children's  
13 hospitals or other health care providers to provide case management  
14 services to foster children.

15 (f) [~~(d)~~] Not later than January 15 of each odd-numbered  
16 year, the department shall report to the legislature on the  
17 implementation of the system. The report must include a statement  
18 of:

19 (1) the number of recipients of medical assistance who  
20 received catastrophic case management services under the system  
21 during the preceding two years; and

22 (2) the estimated savings under the medical assistance  
23 program resulting from implementation of the system during the  
24 preceding two years.

25 (b) Not later than January 1, 2006, the Health and Human  
26 Services Commission shall implement the catastrophic case  
27 management system for medically fragile children required by

1 Section 32.055, Human Resources Code, as amended by this section.

2 SECTION 1.64. The heading to Subtitle D, Title 2, Human  
3 Resources Code, is amended to read as follows:

4 SUBTITLE D. DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~]  
5 SERVICES; CHILD WELFARE AND PROTECTIVE SERVICES

6 SECTION 1.65. The heading to Chapter 40, Human Resources  
7 Code, is amended to read as follows:

8 CHAPTER 40. DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~]  
9 SERVICES

10 SECTION 1.66. Subdivisions (3) and (5), Section 40.001,  
11 Human Resources Code, are amended to read as follows:

12 (3) "Department" means the Department of Family and  
13 Protective [~~and Regulatory~~] Services.

14 (5) "Family preservation" includes the provision of  
15 services designed to assist families, including adoptive and  
16 extended families, who are at risk or in crisis, including:

17 (A) preventive services designed to help a child  
18 at risk of foster care placement remain safely with the child's  
19 family; and

20 (B) services designed to help a child return,  
21 when the return is safe and appropriate, to the family from which  
22 the child was removed [~~the protection of parents and their children~~  
23 ~~from needless family disruption because of unfounded accusations of~~  
24 ~~child abuse or neglect. It does not include the provision of state~~  
25 ~~social services for the rehabilitation of parents convicted of~~  
26 ~~abusing or neglecting their children~~].

27 SECTION 1.67. Subsection (b), Section 40.002, Human

1 Resources Code, is amended to read as follows:

2 (b) Notwithstanding any other law, the department shall:

3 (1) provide protective services for children and  
4 elderly and disabled persons, including investigations of alleged  
5 abuse, neglect, or exploitation in facilities of the Texas  
6 Department of Mental Health and Mental Retardation or its successor  
7 agency;

8 (2) provide family support and family preservation  
9 services that respect the fundamental right of parents to control  
10 the education and upbringing of their children;

11 (3) license, register, and enforce regulations  
12 applicable to child-care facilities, ~~and~~ child-care  
13 administrators, and child-placing agency administrators; and

14 (4) implement and manage programs intended to provide  
15 early intervention or prevent at-risk behaviors that lead to child  
16 abuse, delinquency, running away, truancy, and dropping out of  
17 school.

18 SECTION 1.68. Section 40.003, Human Resources Code, is  
19 amended to read as follows:

20 Sec. 40.003. SUNSET PROVISION. The Department of Family  
21 and Protective ~~[and Regulatory]~~ Services is subject to Chapter 325,  
22 Government Code (Texas Sunset Act). Unless continued in existence  
23 as provided by that chapter, the department is abolished and this  
24 chapter expires September 1, 2009.

25 SECTION 1.69. Subchapter A, Chapter 40, Human Resources  
26 Code, is amended by adding Section 40.009 to read as follows:

27 Sec. 40.009. QUALITY ASSURANCE PROGRAM FOR CHILD PROTECTIVE

1 SERVICES; QUARTERLY REPORTS. (a) The department shall develop and  
2 implement a quality assurance program for child protective services  
3 provided by or on behalf of the department.

4 (b) The program must include periodic audits of the  
5 completeness and accuracy of investigatory and inspection-related  
6 reports prepared or required by the department, including:

7 (1) reports of investigations of child abuse and  
8 neglect;

9 (2) reports relating to children placed in foster  
10 care; and

11 (3) reports relating to the licensing and inspection  
12 of residential child-care facilities.

13 (c) An audit must be conducted in accordance with  
14 professional standards and generally recognized sampling  
15 techniques.

16 (d) The department shall retain the results of an audit  
17 conducted under this section until at least the fifth anniversary  
18 of the date the audit is completed.

19 (e) Each fiscal quarter the department shall file with the  
20 governor and the presiding officer of each house of the legislature  
21 a detailed written report assessing the delivery of child  
22 protective services and examining the outcomes for children and  
23 families served by child protective programs, foster care programs,  
24 adoption programs, and other related programs in this state.

25 (f) The report required by Subsection (e) must include:

26 (1) a summary of the audits conducted under this  
27 section during the preceding quarter; and

1           (2) a summary of the department's performance during  
2 the preceding quarter on the most recent standards used by the  
3 federal government to evaluate state child and family services  
4 programs with regard to child safety, permanency, and well-being.

5           SECTION 1.70. (a) Subchapter A, Chapter 40, Human  
6 Resources Code, is amended by adding Section 40.010 to read as  
7 follows:

8           Sec. 40.010. PROTECTIVE SERVICES LEGISLATIVE OVERSIGHT  
9 COMMITTEE. (a) The Protective Services Legislative Oversight  
10 Committee is created to:

11           (1) facilitate the reformation of powers, duties,  
12 functions, programs, and activities of the department; and

13           (2) monitor the effectiveness and efficiency of the  
14 services provided by the department.

15           (b) The committee is composed of 15 members as follows:

16           (1) four members of the senate, appointed by the  
17 lieutenant governor;

18           (2) four members of the house of representatives,  
19 appointed by the speaker of the house of representatives; and

20           (3) six members of the public, appointed by the  
21 governor as follows:

22           (A) one member with experience in a child-placing  
23 agency;

24           (B) one member with experience in a foster family  
25 association;

26           (C) one member with experience in a guardianship  
27 program;

1                   (D) one member with experience in mental health  
2 care;

3                   (E) two members with experience in law  
4 enforcement; and

5                   (F) one member who was formerly a child in foster  
6 care.

7           (c) The commissioner serves as an ex officio member of the  
8 committee.

9           (d) A member of the committee serves at the pleasure of the  
10 appointing official.

11           (e) The lieutenant governor and the speaker of the house of  
12 representatives shall alternate designating a presiding officer  
13 for a term of one year from among their respective appointments.

14           (f) A member of the committee may not receive compensation  
15 for serving on the committee but is entitled to reimbursement for  
16 travel expenses incurred by the member while conducting the  
17 business of the committee as provided by the General Appropriations  
18 Act.

19           (g) In addition to performing the duties prescribed by  
20 Subsection (a), the committee shall:

21                   (1) with assistance from the department and the  
22 commission, advise the commissioner concerning the powers, duties,  
23 functions, programs, and activities of the department and the funds  
24 and obligations that are related to the powers, duties, functions,  
25 programs, or activities;

26                   (2) meet at the call of the presiding officer;

27                   (3) research, take public testimony, and issue reports



1 on other appropriate issues or specific issues requested by the  
2 lieutenant governor, speaker, or governor; and

3 (4) review specific recommendations for legislation  
4 proposed by the department or commission.

5 (h) The committee may request reports and other information  
6 from the commission, the department, and the attorney general  
7 relating to protective services in this state and other appropriate  
8 issues.

9 (i) The committee shall use existing staff of the senate and  
10 house of representatives to assist the committee in performing its  
11 duties under this section.

12 (j) Chapter 551, Government Code, applies to the committee.

13 (k) The committee shall report to the governor, the  
14 lieutenant governor, and the speaker of the house of  
15 representatives not later than November 15 of each even-numbered  
16 year. The report must include:

17 (1) identification of significant issues in the  
18 protective services system, with recommendations for action;

19 (2) an analysis of the effectiveness and efficiency of  
20 the protective services system, with recommendations for any  
21 necessary research; and

22 (3) recommendations for legislative action.

23 (b) The speaker, the lieutenant governor, and the governor  
24 shall appoint the members of the Protective Services Legislative  
25 Oversight Committee created by Section 40.010, Human Resources  
26 Code, as added by this section, as soon as possible after the  
27 effective date of this section. The lieutenant governor shall

1 designate the initial presiding officer of the committee. The  
2 presiding officer shall call the initial meeting of the committee  
3 as soon as possible after the committee members are appointed.

4 SECTION 1.71. Section 40.030, Human Resources Code, is  
5 amended to read as follows:

6 Sec. 40.030. ADVISORY COMMITTEES. The executive  
7 commissioner or the executive commissioner's designee [~~board~~] may  
8 appoint advisory committees in accordance with Chapter 2110,  
9 Government Code [~~Article 6252-33, Revised Statutes~~].

10 SECTION 1.72. The heading to Section 40.0305, Human  
11 Resources Code, is amended to read as follows:

12 Sec. 40.0305. STRATEGIC USE OF TECHNOLOGY [~~STEERING~~  
13 ~~COMMITTEE~~].

14 SECTION 1.73. Subsections (a) and (d), Section 40.0305,  
15 Human Resources Code, are amended to read as follows:

16 (a) The department shall continually explore the strategic  
17 use of technology as a means to improve services, reduce workload  
18 burdens, increase accountability, and enhance the overall  
19 efficiency and effectiveness of department operations. The  
20 department shall develop strategic plans and seek funding to  
21 implement technology enhancements that the department determines  
22 are feasible and cost-effective [~~establish a strategic technology~~  
23 ~~steering committee within the department to evaluate major~~  
24 ~~information technology project proposals~~].

25 (d) In evaluating major information technology project  
26 proposals, the department, in cooperation with the commission,  
27 [~~steering committee~~] shall:

1 (1) assess the major information needs of the  
2 department;

3 (2) define standard criteria for setting priorities  
4 for the department's information needs;

5 (3) forecast the returns to the department on project  
6 investments;

7 (4) evaluate the department's available information  
8 resources; and

9 (5) review, approve, and evaluate the status of  
10 projected costs and benefits related to project proposals.

11 SECTION 1.74. Section 40.031, Human Resources Code, is  
12 amended to read as follows:

13 Sec. 40.031. DIVISIONS OF DEPARTMENT. (a) The executive  
14 commissioner [~~board~~] may establish divisions within the department  
15 as necessary for efficient administration and for the discharge of  
16 the department's functions.

17 (b) The executive commissioner shall establish an  
18 investigations division to oversee and direct the investigation  
19 functions of the child protective services program, including the  
20 receipt and screening of all reports of alleged child abuse or  
21 neglect.

22 (c) The commissioner shall designate a person with law  
23 enforcement experience as the director of the investigations  
24 division.

25 (d) The investigations division shall, as appropriate,  
26 refer children and families in need of services to other department  
27 divisions or to other persons or entities with whom the department

1 contracts for the provision of the needed services.

2 (e) Reports of alleged child abuse or neglect investigated  
3 under Subchapter E, Chapter 261, Family Code, are not subject to  
4 investigation by the investigations division [~~board may allocate~~  
5 ~~and reallocate functions, programs, and activities among the~~  
6 ~~department's divisions~~].

7 SECTION 1.75. (a) Subchapter B, Chapter 40, Human  
8 Resources Code, is amended by adding Section 40.0322 to read as  
9 follows:

10 Sec. 40.0322. CASEWORKER REPLACEMENT PROGRAM. (a) To the  
11 extent that funding is available, the department shall develop a  
12 program to provide for the timely replacement of caseworkers with  
13 trainees hired in anticipation of vacancies.

14 (b) In developing the program, the department shall  
15 consider the turnover rate for caseworkers by region.

16 (b) Unless sufficient funds are not available, the  
17 Department of Family and Protective Services shall develop the  
18 program required under Section 40.0322, Human Resources Code, as  
19 added by this section, not later than December 31, 2005.

20 SECTION 1.76. Subchapter B, Chapter 40, Human Resources  
21 Code, is amended by adding Section 40.0323 to read as follows:

22 Sec. 40.0323. CASELOAD STANDARDS. Notwithstanding Section  
23 531.048(d), Government Code, in an ongoing manner, the department  
24 is encouraged to analyze and consider the appropriateness of hiring  
25 caseworkers for the children's protective services division in  
26 sufficient numbers to reduce those caseworkers' caseloads to the  
27 maximum number of active caseloads recommended for best practice

1 casework by the Council on Accreditation for Children and Family  
2 Services and the Child Welfare League of America.

3 SECTION 1.77. Subchapter B, Chapter 40, Human Resources  
4 Code, is amended by adding Section 40.035 to read as follows:

5 Sec. 40.035. ENHANCED TRAINING OF CHILD PROTECTIVE SERVICES  
6 CASEWORKERS. To improve the quality and consistency of training  
7 provided to child protective services caseworkers, the department  
8 shall:

9 (1) augment classroom-based training with a blended  
10 learning environment using computer-based modules, structured  
11 field experience, and simulation for skills development;

12 (2) use a core curriculum for all new department  
13 caseworkers and specialized training for specific jobs;

14 (3) require that department caseworkers transferring  
15 from one specialty to another must complete the core curriculum and  
16 advanced training for the new specialty before assuming their new  
17 responsibilities; and

18 (4) centralize accountability and oversight of all  
19 department training in order to ensure statewide consistency.

20 SECTION 1.78. Subchapter C, Chapter 40, Human Resources  
21 Code, is amended by adding Section 40.0526 to read as follows:

22 Sec. 40.0526. BUILDING COMMUNITY PARTNERSHIPS TO SUPPORT  
23 CHILDREN AND FAMILIES. (a) The department shall develop a  
24 statewide strategy to build alliances and networks at the local  
25 level that support the detection and treatment of child abuse and  
26 neglect and enhance the coordination and delivery of services to  
27 children and families.

1           (b) The strategy must include plans to:

2                   (1) move staff from centralized office sites into  
3 community-based settings to the greatest extent feasible; and

4                   (2) enter into agreements for the establishment or  
5 development of joint offices or workplaces with local officials and  
6 organizations, including:

7                           (A) children's advocacy centers;

8                           (B) law enforcement officials;

9                           (C) prosecutors;

10                          (D) health care providers;

11                          (E) schools;

12                          (F) housing projects;

13                          (G) domestic violence shelters; and

14                          (H) the local juvenile probation department.

15           (c) The department may employ specialized staff, to the  
16 extent that funds are appropriated for that purpose, to serve as:

17                   (1) local legal liaisons who support the prosecution  
18 in each region of legal cases through the judicial system by  
19 improving coordination and cooperation in case consultation and  
20 preparation of cases for court; and

21                   (2) local community initiative specialists in each  
22 region who focus on building community alliances and networks.

23           (d) An agreement made in accordance with this section for  
24 the joint location of department personnel with other local  
25 officials or organizations is not subject to Chapter 2167,  
26 Government Code.

27           SECTION 1.79. Subchapter C, Chapter 40, Human Resources

Code, is amended by adding Section 40.0527 to read as follows:

Sec. 40.0527. COMPREHENSIVE STAFFING AND WORKLOAD DISTRIBUTION PLAN FOR CHILD PROTECTIVE SERVICES. (a) The department shall develop and implement a staffing and workload distribution plan for the child protective services program to:

- (1) enhance accountability;
- (2) improve the quality of investigations;
- (3) eliminate delays; and
- (4) ensure the most efficient and effective use of

child protective services staff and resources.

(b) In developing and implementing the plan, the department shall, subject to available funds:

(1) develop a methodology for the equitable distribution of investigative and other staff to ensure an equitable assignment of cases in each area of the state;

(2) evaluate the duties of investigators and supervisors and identify and reassign functions that may be performed more efficiently by support or other paraprofessional staff;

(3) ensure that investigative and service units contain adequate supervisory and support staff;

(4) provide incentives to recruit and retain:

(A) caseworkers and supervisors assigned to investigative units; and

(B) specialized staff with law enforcement or forensic investigation experience;

(5) ensure that caseworkers and supervisors who are

1 not in an investigations unit are paid appropriately to increase  
2 employee retention;

3 (6) when appropriate, identify and use alternative  
4 work schedules;

5 (7) use a system of regional hiring supervisors for  
6 targeted recruitment efforts;

7 (8) improve staff recruitment and screening methods to  
8 promote the hiring of the most qualified candidates and improve an  
9 applicant's understanding of the job requirements;

10 (9) reduce the time necessary to complete a plan of  
11 service for a child and family when providing family-based safety  
12 services; and

13 (10) identify methods to reduce the administrative  
14 area that a manager is responsible for to increase accountability.

15 SECTION 1.80. (a) Section 40.058, Human Resources Code, is  
16 amended by amending Subsections (b) and (c) and adding Subsections  
17 (b-1) and (f) through (i) to read as follows:

18 (b) A contract for the purchase of program-related client  
19 services must include:

20 (1) clearly defined goals and outcomes that can be  
21 measured to determine whether the objectives of the program are  
22 being achieved;

23 (2) clearly defined sanctions or penalties for  
24 noncompliance with contract terms; ~~and~~

25 (3) clearly specified accounting, reporting, and  
26 auditing requirements applicable to money received under the  
27 contract; and



1           (4) if applicable, clearly defined performance  
2 standards that relate directly to the quality of care provided to  
3 residents of foster care facilities.

4           (b-1) A contract for the purchase of substitute care  
5 services, as defined by Section 264.106, Family Code, must be  
6 procured using:

7                   (1) department procurement procedures; or

8                   (2) procurement procedures approved by the executive  
9 commissioner that promote open and fair competition.

10           (c) The department shall monitor a contractor's performance  
11 under a contract for the purchase of program-related client  
12 services. In monitoring performance, the department shall:

13                   (1) use a risk-assessment methodology to ensure  
14 compliance with financial and performance requirements under the  
15 contract; ~~and~~

16                   (2) obtain and evaluate program cost information to  
17 ensure that all costs, including administrative costs, are  
18 reasonable and necessary to achieve program objectives; and

19                   (3) review each foster care services contract and  
20 evaluate the contract for compliance with the performance standards  
21 of the contract prescribed by Subsection (b)(4).

22           (f) The department shall terminate a contract with a foster  
23 care services provider if the contractor does not meet the  
24 performance standards prescribed by Subsection (b)(4). The  
25 department may not award or renew a foster care services contract  
26 with a contractor if the contractor does not meet those performance  
27 standards.

1       (g) The commission shall create a foster care performance  
2 team to develop performance criteria for foster care services  
3 contracts. The team shall include contracting experts from  
4 multiple state agencies, foster care services providers and  
5 clients, performance-based contract experts of the state auditor,  
6 and other experts in outcome-based contracts. The team shall  
7 develop clearly defined and measurable standards for foster care  
8 services contracts that directly relate to factors within the  
9 control of the providers. The department shall adopt the clearly  
10 defined performance standards for inclusion in foster care services  
11 contracts as developed and recommended by the team. The team shall  
12 also develop performance standards that provide measurable  
13 criteria for identification of foster care services providers:

14               (1) that do not provide quality care;

15               (2) that should not receive additional contract  
16 awards; and

17               (3) whose contracts should be revoked.

18       (h) The commission shall create an alternative payment plan  
19 in all foster care services contracts to encourage the reduction of  
20 the period that children are in intensive levels of care. The  
21 payment plan must provide several alternative payment mechanisms to  
22 encourage foster care services contractors to improve the quality  
23 of care, encourage efficient use of funding, and reduce the period  
24 of intensive care for children under program-related client  
25 services contracts for foster care. The payment plan may not be  
26 designed in a manner that encourages or requires a reduction in the  
27 level of care provided to medically fragile children, as defined by

1 Section 32.055, children with significant developmental  
2 disabilities, or other children with chronic conditions that  
3 require a constant level of care.

4 (i) A contract for the provision of foster care services  
5 must contain a provision requiring the department's contract  
6 management employees to make periodic unannounced visits to the  
7 contractor's facilities in accordance with commission rules and to  
8 report the employees' findings to the commission.

9 (b) Subdivision (4), Subsection (b), Subsection (b-1),  
10 Subdivision (3), Subsection (c), and Subsections (f), (g), and (i),  
11 Section 40.058, Human Resources Code, as added by this section,  
12 apply only to a contract entered into or renewed on or after the  
13 effective date of this section. A contract entered into or renewed  
14 before that date is governed by the law in effect on the date the  
15 contract is entered into or renewed, and the former law is continued  
16 in effect for that purpose.

17 SECTION 1.81. (a) Subchapter C, Chapter 40, Human  
18 Resources Code, is amended by adding Section 40.071 to read as  
19 follows:

20 Sec. 40.071. MISSING CHILDREN WEBSITE. (a) The department  
21 shall develop and implement a program to display on the  
22 department's Internet website the name, age, and photograph of, and  
23 location information relating to, any child in the foster care  
24 system who has been reported missing. The department may also  
25 display other relevant information that the department determines  
26 will be useful in efforts to locate and ensure the safety of that  
27 child.

1        (b) Notwithstanding any other law, information required to  
2 be provided under this section is public information.

3        (c) The department shall regularly update the website by  
4 adding additional information that becomes available and by  
5 deleting the information relating to a child who is no longer  
6 missing.

7        (b) Not later than January 1, 2006, the executive  
8 commissioner of the Health and Human Services Commission shall  
9 adopt rules and establish standards, policies, and procedures to  
10 implement and administer Section 40.071, Human Resources Code, as  
11 added by this section.

12        SECTION 1.82. Section 42.002, Human Resources Code, is  
13 amended by adding Subdivisions (18) and (19) to read as follows:

14        (18) "Controlling person" means a person who, either  
15 alone or in connection with others, has the ability to directly or  
16 indirectly influence or direct the management, expenditures, or  
17 policies of a residential child-care facility.

18        (19) "Residential child-care facility" means a  
19 facility licensed or certified by the department to provide  
20 assessment, care, training, education, custody, treatment, or  
21 supervision for a child who is not related by blood, marriage, or  
22 adoption to the owner or operator of the facility, for all of the  
23 24-hour day, whether or not the facility is operated for profit or  
24 charges for the services it offers. The term includes child-care  
25 institutions, foster group homes, foster homes, agency foster group  
26 homes, and agency foster homes.

27        SECTION 1.83. Subsections (b) and (d), Section 42.021,

1 Human Resources Code, are amended to read as follows:

2 (b) The commissioner [~~executive director of the department~~]  
3 shall appoint as director of a division designated under Subsection  
4 (a) a person who meets the qualifications set by the executive  
5 commissioner [~~board~~].

6 (d) The commissioner [~~director~~] may divide the state into  
7 regions for the purpose of administering this chapter.

8 SECTION 1.84. Subsections (a) and (b), Section 42.023,  
9 Human Resources Code, are amended to read as follows:

10 (a) The department [~~executive director~~] shall prepare an  
11 annual written report regarding the department's activities under  
12 this chapter.

13 (b) The annual report shall include:

14 (1) a report by regions of applications for licensure  
15 or certification, of initial [~~provisional~~] licenses issued,  
16 denied, or revoked, of licenses issued, denied, suspended or  
17 revoked, of emergency closures and injunctions, and of the  
18 compliance of state-operated agencies with certification  
19 requirements;

20 (2) a summary of the amount and kind of in-service  
21 training and other professional development opportunities provided  
22 for department staff;

23 (3) a summary of training and other professional  
24 development opportunities offered to facilities' staffs; and

25 (4) a report of new administrative procedures, of the  
26 number of staff and staff changes, and of plans for the coming year.

27 SECTION 1.85. (a) Subsection (c), Section 42.041, Human

1 Resources Code, is amended to read as follows:

2 (c) A single license that lists addresses and the  
3 appropriate facilities may be issued to a child-care institution  
4 that operates noncontiguous facilities that are across the street  
5 from, in the same city block as, or on the same property as one  
6 another [~~nearby~~] and that are demonstrably a single operation as  
7 indicated by patterns of staffing, finance, administrative  
8 supervision, and programs.

9 (b) Subsection (c), Section 42.041, Human Resources Code,  
10 as amended by this section, applies only to a license issued or  
11 renewed on or after the effective date of this section. A license  
12 issued or renewed before the effective date of this section is  
13 governed by the law in effect at the time the license is issued or  
14 renewed, and the former law is continued in effect for that purpose.

15 SECTION 1.86. (a) Section 42.042, Human Resources Code, is  
16 amended by adding Subsections (h-1) and (q) to read as follows:

17 (h-1) The executive commissioner shall adopt rules  
18 governing:

19 (1) the placement and care of children by a  
20 child-placing agency, as necessary to ensure the health and safety  
21 of those children;

22 (2) the verification and monitoring of agency foster  
23 homes, agency foster group homes, and adoptive homes by a  
24 child-placing agency; and

25 (3) if appropriate, child-placing agency staffing  
26 levels, office locations, and administration.

27 (q) Each residential child-care facility shall notify the

1 department and the appropriate local law enforcement agency  
2 immediately on determining that a child is missing from the  
3 facility.

4 (b) Not later than January 1, 2006, the executive  
5 commissioner of the Health and Human Services Commission shall  
6 adopt rules and establish standards, policies, and procedures to  
7 implement and administer Subsections (h-1) and (q), Section 42.042,  
8 Human Resources Code, as added by this section.

9 SECTION 1.87. Section 42.044, Human Resources Code, is  
10 amended by adding Subsections (e) and (f) to read as follows:

11 (e) The department shall periodically conduct inspections  
12 of a random sample of agency foster homes and agency foster group  
13 homes. The department shall use the inspections to monitor and  
14 enforce compliance by a child-placing agency with rules and  
15 standards established under Section 42.042.

16 (f) The department shall use an inspection checklist that  
17 includes a list of all required items for inspection in conducting a  
18 monitoring inspection under this section.

19 SECTION 1.88. Section 42.0441, Human Resources Code, is  
20 amended to read as follows:

21 Sec. 42.0441. INSPECTION RESULTS AND EXIT CONFERENCE.

22 (a) Immediately after completing a monitoring inspection of a  
23 licensed day-care center, licensed group day-care home, or  
24 registered family home under Section 42.044, the inspector  
25 [~~authorized representative of the department~~] shall review the  
26 results of the monitoring inspection with a representative of the  
27 facility and give the facility an opportunity to respond to the

1 inspection results.

2 (b) Immediately after completing a monitoring inspection of  
3 a residential child-care facility under Section 42.044, the  
4 inspector shall hold an exit conference with a representative of  
5 the facility. The inspector shall provide to the representative:

6 (1) a copy of the inspection checklist used by the  
7 inspector; and

8 (2) a list of violations discovered during the  
9 inspection that includes specific references to the rules and  
10 minimum standards related to the violations.

11 (c) An inspector acting under Subsection (b) shall provide  
12 the residential child-care facility representative an opportunity  
13 to respond to the violations discovered during the inspection.

14 (d) If after holding an exit conference under Subsection (b)  
15 the inspector finds additional violations in a subsequent  
16 inspection of the residential child-care facility, the inspector  
17 shall conduct another exit conference to provide the information  
18 required by Subsection (b) with respect to the additional  
19 violations.

20 SECTION 1.89. Subchapter C, Chapter 42, Human Resources  
21 Code, is amended by adding Section 42.04411 to read as follows:

22 Sec. 42.04411. INFORMAL DISPUTE RESOLUTION. (a) The  
23 executive commissioner by rule shall establish an informal dispute  
24 resolution process under which a disinterested individual may  
25 resolve a dispute between the department and a residential  
26 child-care facility regarding a violation discovered during an  
27 inspection, a proposed enforcement action relating to the



1 violation, or another related proceeding under this chapter. The  
2 process must require:

3 (1) the aggrieved residential child-care facility to  
4 request informal dispute resolution not later than the 15th day  
5 after the date the facility is notified of the violation, proposed  
6 enforcement action, or other proceeding that is the basis of the  
7 dispute; and

8 (2) an individual representing the aggrieved  
9 residential child-care facility in the process to register with the  
10 commission and disclose the following:

11 (A) the individual's employment history during  
12 the preceding five years, including employment with a regulatory  
13 agency of this state or another state;

14 (B) the ownership, including the identity of the  
15 controlling person or persons, of the aggrieved residential  
16 child-care facility the individual is representing; and

17 (C) the identity of other entities the individual  
18 is representing, or has represented during the preceding 24 months,  
19 before the commission.

20 (b) The executive commissioner shall adopt rules to resolve  
21 disputes under the informal dispute resolution process. The rules  
22 must require that the process be completed not later than the 30th  
23 day after the date the aggrieved residential child-care facility  
24 requests informal dispute resolution.

25 (c) The commission may not delegate to another state agency  
26 the responsibility to administer the informal dispute resolution  
27 process established under this section.

1 SECTION 1.90. Subchapter C, Chapter 42, Human Resources  
2 Code, is amended by adding Section 42.04431 to read as follows:

3 Sec. 42.04431. RESIDENTIAL CHILD-CARE INSPECTION  
4 INFORMATION DATABASE. (a) The department shall establish a  
5 computerized database containing inspection information, including  
6 violations of minimum standards, on residential child-care  
7 facilities and child-placing agencies inspected under Section  
8 42.044.

9 (b) The department shall make the information collected by  
10 the department available to another state agency or political  
11 subdivision of the state for the purpose of administering programs  
12 or enforcing laws within the jurisdiction of that agency or  
13 subdivision. If feasible using available information systems, the  
14 department shall make the information directly available to the  
15 Department of State Health Services and the commission through  
16 electronic information systems. The department, the Department of  
17 State Health Services, and the commission shall jointly plan the  
18 development of inspection databases that, to the extent feasible,  
19 are similar in their design and architecture to promote the sharing  
20 of information.

21 (c) The department shall categorize information regarding  
22 violations of minimum standards collected under this section by:

23 (1) the type and size of the residential child-care  
24 facility in which the violation occurred;

25 (2) the region of this state in which the violation  
26 occurred; and

27 (3) the type of violation.

1           (d) The department shall use the information to:

2                   (1) identify trends in violations in relation to  
3 regions of this state and types of residential child-care  
4 facilities;

5                   (2) identify minimum standards that are subject to  
6 inconsistent interpretation;

7                   (3) identify training needs;

8                   (4) direct training and other resources to residential  
9 child-care facilities that present the greatest risk to child  
10 safety; and

11                   (5) improve the quality of residential child-care  
12 services without increasing expenditures.

13           SECTION 1.91. Section 42.046, Human Resources Code, is  
14 amended by amending Subsection (c) and adding Subsection (e) to  
15 read as follows:

16           (c) After receiving an application, the department shall  
17 investigate the applicant and the plan of care for children, if  
18 applicable. As part of the investigation of an applicant for a  
19 license to operate a residential child-care facility, the  
20 department shall require the applicant to provide information about  
21 the applicant's and each controlling person's compliance history  
22 with the regulatory requirements in any other state in which the  
23 applicant or controlling person operates or previously operated a  
24 residential child-care facility.

25           (e) The department may deny an application under this  
26 section if the applicant:

27                   (1) has a residential child-care facility license

1 revoked in another state; or

2 (2) is barred from operating a residential child-care  
3 facility in another state.

4 SECTION 1.92. Subsections (f) and (g), Section 42.0461,  
5 Human Resources Code, are amended to read as follows:

6 (f) A child-placing agency that proposes to verify an agency  
7 foster home or agency foster group home that is located in a county  
8 with a population of less than 300,000 that provides child care for  
9 24 hours a day at a location other than the actual residence of a  
10 child's primary caretaker shall:

11 (1) comply with the notice and hearing requirements  
12 imposed by Subsections (a) and (b); and

13 (2) after conducting the required public hearing,  
14 provide the department with information relating to the  
15 considerations specified in Subsection (d).

16 (g) The department may prohibit the child-placing agency  
17 from verifying the proposed agency foster home or agency foster  
18 group home on the same grounds that the department may deny an  
19 application under Subsection (e). The department may invalidate  
20 the verification of an agency foster home or agency foster group  
21 home that was not verified using the procedures required by  
22 Subsection (f) on or after September 1, 1997.

23 SECTION 1.93. Section 42.051, Human Resources Code, is  
24 amended to read as follows:

25 Sec. 42.051. INITIAL [~~PROVISIONAL~~] LICENSE. (a) The  
26 department shall issue an initial [~~a provisional~~] license when a  
27 facility's plans meet the department's licensing requirements and

1 one of the following situations exists:

- 2 (1) the facility is not currently operating;
- 3 (2) the facility has relocated and has made changes in  
4 the type of child-care service it provides; or
- 5 (3) there is a change in ownership of the facility  
6 resulting in changes in policy and procedure or in the staff who  
7 have direct contact with the children.

8 (b) An initial [~~A provisional~~] license is valid for six  
9 months from the date it is issued and may be renewed for an  
10 additional six months.

11 SECTION 1.94. Subsection (b), Section 42.054, Human  
12 Resources Code, is amended to read as follows:

13 (b) The department shall charge each child-care facility a  
14 fee of \$35 for an initial [~~a provisional~~] license. The department  
15 shall charge each child-placing agency a fee of \$50 for an initial  
16 [~~a provisional~~] license.

17 SECTION 1.95. (a) Section 42.056, Human Resources Code, is  
18 amended by adding Subsections (a-1), (d), (e), and (f) and amending  
19 Subsection (b) to read as follows:

20 (a-1) In accordance with rules adopted by the executive  
21 commissioner, the director, owner, or operator of a residential  
22 child-care facility shall submit to the department for use in  
23 conducting background and criminal history checks the name of each  
24 prospective employee who will provide direct care or have direct  
25 access to a child in the residential child-care facility.

26 (b) The department shall conduct background and criminal  
27 history checks using:

1 (1) the information provided under Subsections  
2 [~~Subsection~~] (a) and (a-1);

3 (2) the information made available by the Department  
4 of Public Safety under Section 411.114, Government Code, and [~~or~~]  
5 by the Federal Bureau of Investigation or other criminal justice  
6 agency under Section 411.087, Government Code; and

7 (3) the department's records of reported abuse and  
8 neglect.

9 (d) A person described by Subsection (a) or (a-1) may not  
10 provide direct care or have direct access to a child in a  
11 residential child-care facility before completion of the person's  
12 background check and criminal history check.

13 (e) The department shall provide the results of a background  
14 or criminal history check conducted under this section regarding a  
15 prospective employee to a director, owner, or operator of a  
16 residential child-care facility within 24 hours. If the  
17 residential child-care facility does not receive the results of the  
18 background or criminal history check within that time, the facility  
19 may obtain that information for the facility's employee,  
20 subcontractor, or volunteer directly from the Department of Public  
21 Safety. If the information obtained verifies that the person does  
22 not have a criminal record, the facility may allow the person to  
23 have unsupervised client contact until the department has performed  
24 the department's own criminal history check and notified the  
25 facility.

26 (f) As part of a background check under this section, the  
27 department shall provide any relevant information available in the

1 department's records regarding a person's previous employment in a  
2 residential child-care facility to the person submitting the  
3 request.

4 (b) The director, owner, or operator of a residential  
5 child-care facility shall begin providing information to the  
6 Department of Family and Protective Services as required by  
7 Subsection (a-1), Section 42.056, Human Resources Code, as added by  
8 this section, as soon as possible after the effective date of this  
9 section and not later than January 1, 2006.

10 SECTION 1.96. (a) Subchapter C, Chapter 42, Human  
11 Resources Code, is amended by adding Section 42.057 to read as  
12 follows:

13 Sec. 42.057. DRUG TESTING. (a) Each residential  
14 child-care facility shall establish a drug testing policy for  
15 employees. A residential child-care facility may adopt the model  
16 employee drug testing policy adopted by the executive commissioner  
17 under Subsection (b) or may use another employee drug testing  
18 policy approved by the executive commissioner.

19 (b) The executive commissioner by rule shall adopt a model  
20 employee drug testing policy for use by a residential child-care  
21 facility. The policy must be designed to ensure the safety of  
22 resident children through appropriate drug testing of employees  
23 while protecting the rights of employees. The model policy must  
24 require:

- 25 (1) preemployment drug testing;  
26 (2) random, unannounced drug testing of each employee  
27 who has direct contact with a child in the care of the facility;

1           (3) drug testing of an employee against whom there is  
2 an allegation of drug abuse; and

3           (4) drug testing of an employee whom the department is  
4 investigating for the abuse or neglect of a child in the care of the  
5 facility, if the allegation of abuse or neglect includes  
6 information that provides good cause to suspect drug abuse.

7           (c) The department shall require a drug test of a person who  
8 directly cares for or has access to a child in a residential  
9 child-care facility within 24 hours after the department receives  
10 notice of an allegation that the person has abused drugs.

11           (d) An employee may not provide direct care or have direct  
12 access to a child in a residential child-care facility before  
13 completion of the employee's initial drug test.

14           (e) A residential child-care facility shall pay any fee or  
15 cost associated with performing the drug test for an employee.

16           (b) Not later than December 1, 2005, the executive  
17 commissioner of the Health and Human Services Commission shall  
18 adopt the model drug testing policy required by Section 42.057,  
19 Human Resources Code, as added by this section.

20           (c) Not later than January 1, 2006, each residential  
21 child-care facility shall adopt a drug testing policy required by  
22 Section 42.057, Human Resources Code, as added by this section.

23           SECTION 1.97. (a) Subchapter C, Chapter 42, Human  
24 Resources Code, is amended by adding Section 42.061 to read as  
25 follows:

26           Sec. 42.061. RISK ASSESSMENT. (a) If an employee or  
27 volunteer at a residential child-care facility has been convicted



1 of a crime, the department shall perform a risk assessment of the  
2 person before the person is allowed access to a child in the  
3 facility. The department shall also perform a similar risk  
4 assessment of a person who is at least 14 years of age and who will  
5 regularly or frequently be staying at the facility while children  
6 are being provided care.

7 (b) The executive commissioner by rule shall develop and  
8 maintain risk assessment criteria to ensure the safety and  
9 well-being of a child's physical or mental health or welfare.

10 (b) Not later than January 1, 2006, the executive  
11 commissioner of the Health and Human Services Commission shall  
12 adopt rules required by Section 42.061, Human Resources Code, as  
13 added by this section.

14 SECTION 1.98. Subchapter C, Chapter 42, Human Resources  
15 Code, is amended by adding Section 42.062 to read as follows:

16 Sec. 42.062. CERTAIN EMPLOYMENT PROHIBITED. A residential  
17 child-care facility may not employ in any capacity a person who is  
18 not eligible to receive a license or certification for the  
19 operation of a residential child-care facility under Section  
20 42.072(c-1) or who has been denied a license under Section 42.046.

21 SECTION 1.99. Subchapter C, Chapter 42, Human Resources  
22 Code, is amended by adding Section 42.063 to read as follows:

23 Sec. 42.063. REPORTING OF INCIDENTS AND VIOLATIONS.

24 (a) In this section, "serious incident" means a suspected or  
25 actual incident that threatens or impairs the basic health, safety,  
26 or well-being of a child. The term includes:

27 (1) the arrest, abuse, neglect, exploitation, running

1 away, attempted suicide, or death of a child;

2 (2) a critical injury of a child; and

3 (3) an illness of a child that requires  
4 hospitalization.

5 (b) A person licensed under this chapter shall report to the  
6 department each serious incident involving a child who receives  
7 services from the person, regardless of whether the department is  
8 the managing conservator of the child.

9 (c) An employee of a person described by Subsection (b)  
10 shall report suspected abuse or neglect directly to the statewide  
11 intake system.

12 (d) An employee or volunteer of a child-care institution,  
13 child-placing agency, foster home, or foster group home shall  
14 report any serious incident directly to the department if the  
15 incident involves a child under the care of the institution,  
16 agency, or home.

17 (e) A foster parent shall report any serious incident  
18 directly to the department if the incident involves a child under  
19 the care of the parent.

20 (f) The executive commissioner by rule shall prescribe:

21 (1) procedures governing reporting required under  
22 this section; and

23 (2) the manner in which a report under this section  
24 must be provided.

25 SECTION 1.100. (a) Section 42.0705, Human Resources Code,  
26 is amended to read as follows:

27 Sec. 42.0705. RANGE OF PENALTIES. (a) The department

1 shall revoke, suspend, or refuse to renew a license or  
2 registration, place on probation a person whose license or  
3 registration has been suspended, or reprimand a license holder or  
4 registration holder for a violation of this chapter or a rule of the  
5 board.

6 (b) If a license or registration suspension is probated, the  
7 department may require the license holder or registration holder  
8 to:

9 (1) report regularly to the department on matters that  
10 are the basis of the probation;

11 (2) limit services to the areas prescribed by the  
12 department;

13 (3) continue or review professional education until  
14 the license holder or registration holder attains a degree of skill  
15 satisfactory to the department in those areas that are the basis of  
16 the probation; or

17 (4) take corrective action relating to the violation  
18 on which the probation is based.

19 (c) The executive commissioner by rule shall establish  
20 gradations of penalties in accordance with the relative seriousness  
21 of the violation. The rules shall prescribe the violations or  
22 number of violations that will result in the department's  
23 automatically revoking a facility's license, certification, or  
24 registration under Section 42.072.

25 (d) In determining the penalty to impose, the department  
26 shall consider any matter that justice may require, including:

27 (1) the gradations of penalties established under

1 Subsection (c);

2 (2) the seriousness of the violation, including the  
3 nature, circumstances, extent, and gravity of the prohibited act  
4 and the hazard or potential hazard created by the act to the health  
5 or safety of a resident child;

6 (3) the history of previous violations;

7 (4) deterrence of future violations; and

8 (5) efforts to correct the violation.

9 (b) Not later than December 31, 2005, the executive  
10 commissioner of the Health and Human Services Commission shall  
11 establish the gradations of penalties required under Section  
12 42.0705, Human Resources Code, as amended by this section.

13 SECTION 1.101. Section 42.072, Human Resources Code, is  
14 amended by adding Subsection (c-1) to read as follows:

15 (c-1) Notwithstanding Subsection (c), the department shall  
16 refuse to issue a license or certification for the operation of a  
17 residential child-care facility to a person who previously held  
18 more than a 20 percent ownership interest in or served as an  
19 officer, director, board member, or administrator of a residential  
20 child-care facility at the time of the occurrence of conduct that  
21 resulted in:

22 (1) the license or certification of the facility being  
23 revoked by the department or by court order; or

24 (2) the facility being voluntarily closed or its  
25 license or certification relinquished after:

26 (A) the department took an action under  
27 Subsection (a) in relation to the facility; or

1           (B) the facility received notice that the  
2 department intended to take an action under Subsection (a) in  
3 relation to the facility.

4           SECTION 1.102. Subsection (c), Section 42.073, Human  
5 Resources Code, is amended to read as follows:

6           (c) An order is valid for 10 days after the effective date of  
7 the order, except that an order relating to a residential  
8 child-care facility is valid for 30 days after the effective date of  
9 the order.

10          SECTION 1.103. Section 42.077, Human Resources Code, is  
11 amended by adding Subsection (d-1) to read as follows:

12          (d-1) If the department determines that the license of a  
13 residential child-care facility should be revoked or suspended, the  
14 facility shall mail notification of the action or proposed action  
15 by certified mail to a parent of each child served by the facility,  
16 if the person's parental rights have not been terminated, and to the  
17 child's managing conservator, as appropriate. The residential  
18 child-care facility shall mail the notification not later than the  
19 fifth day after the date the facility is notified of the  
20 department's determination that revocation or suspension of the  
21 license is appropriate.

22          SECTION 1.104. (a) Section 42.078, Human Resources Code,  
23 is amended by amending Subsections (a) through (i) and (l), (m), and  
24 (n) and adding Subsection (a-1) to read as follows:

25          (a) The department may impose an administrative penalty  
26 against a facility or family home licensed or registered under this  
27 chapter that violates this chapter or a rule or order adopted under

1 this chapter. In addition, the department may impose an  
2 administrative penalty against a residential child-care facility  
3 or a controlling person of a residential child-care facility if the  
4 facility or controlling person:

5 (1) violates a term of a license or registration  
6 issued under this chapter;

7 (2) makes a statement about a material fact that the  
8 facility or person knows or should know is false:

9 (A) on an application for the issuance or renewal  
10 of a license or registration or an attachment to the application; or

11 (B) in response to a matter under investigation;

12 (3) refuses to allow a representative of the  
13 department to inspect:

14 (A) a book, record, or file required to be  
15 maintained by the facility; or

16 (B) any part of the premises of the facility;

17 (4) purposefully interferes with the work of a  
18 representative of the department or the enforcement of this  
19 chapter; or

20 (5) fails to pay a penalty assessed under this chapter  
21 on or before the date the penalty is due, as determined under this  
22 section.

23 (a-1) Nonmonetary, administrative penalties or remedies,  
24 including but not limited to corrective action plans, probation,  
25 and evaluation periods, shall be imposed when appropriate before  
26 monetary penalties.

27 (b) Each day a violation continues or occurs is a separate

1 violation for purposes of imposing a penalty. The penalty for a  
 2 violation may be in an amount not to exceed the following limits,  
 3 based on the maximum number of children for whom the facility or  
 4 family home was authorized to provide care or the number of children  
 5 under the care of the child-placing agency when the violation  
 6 occurred [~~receiving care at the facility or family home at the time~~  
 7 ~~of the violation~~]:

8 (1) for violations that occur in a facility other than  
 9 a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	\$20
21-40	\$30
41-60	\$40
61-80	\$50
81-100	\$75
More than 100	\$100 <u>and</u>

17 (2) for violations that occur in a residential  
 18 child-care facility:

<u>Number of children</u>	<u>Maximum amount of penalty</u>
<u>20 or less</u>	<u>\$100</u>
<u>21-40</u>	<u>\$150</u>
<u>41-60</u>	<u>\$200</u>
<u>61-80</u>	<u>\$250</u>
<u>81-100</u>	<u>\$375</u>
<u>More than 100</u>	<u>\$500</u>

26 (c) In addition to the number of children, the [~~The~~] amount  
 27 of the penalty shall be based on:

1           (1) the seriousness of the violation, including the  
2 nature, circumstances, extent, and gravity of any prohibited acts,  
3 and the hazard or potential hazard created to the health, safety, or  
4 economic welfare of the public;

5           (2) the economic harm to property or the environment  
6 caused by the violation;

7           (3) the history of previous violations;

8           (4) the amount necessary to deter future violations;

9           (5) efforts to correct the violation; and

10          (6) any other matter that justice may require.

11          (d) Monetary penalties shall not be assessed for violations  
12 that are the result of clerical errors [~~or standards which do not~~  
13 ~~clearly apprise the facility or family home of the action required~~  
14 ~~by the standard~~].

15          (e) If the department [~~executive director~~] determines that  
16 a violation has occurred, the department [~~executive director~~] may  
17 issue a recommendation on the imposition of a penalty, including a  
18 recommendation on the amount of the penalty.

19          (f) Within 14 days after the date the recommendation is  
20 issued, the department [~~executive director~~] shall give written  
21 notice of the recommendation to the person owning or operating the  
22 facility or family home or to the controlling person, if  
23 applicable. The notice may be given by certified mail. The notice  
24 must include a brief summary of the alleged violation and a  
25 statement of the amount of the recommended penalty and must inform  
26 the person that the person has a right to a hearing on the  
27 occurrence of the violation, the amount of the penalty, or both the



1 occurrence of the violation and the amount of the penalty.

2 (g) Within 20 days after the date the person receives the  
3 notice, the person in writing may accept the determination and  
4 recommended penalty of the department [~~executive director~~] or may  
5 make a written request for a hearing on the occurrence of the  
6 violation, the amount of the penalty, or both the occurrence of the  
7 violation and the amount of the penalty.

8 (h) If the person accepts the determination and recommended  
9 penalty of the department [~~executive director~~] or fails to respond  
10 to the notice in a timely manner, the department [~~executive  
11 director~~] shall issue an order and impose the recommended penalty.

12 (i) If the person requests a hearing, the department  
13 [~~executive director~~] shall set a hearing and give notice of the  
14 hearing to the person. The hearing shall be held by an  
15 administrative law judge of the State Office of Administrative  
16 Hearings. The administrative law judge shall make findings of fact  
17 and conclusions of law and issue a final decision finding that a  
18 violation has occurred and imposing a penalty or finding that no  
19 violation occurred.

20 (l) Within the 30-day period, a person who acts under  
21 Subsection (k)(3) may:

22 (1) stay enforcement of the penalty by:

23 (A) paying the amount of the penalty to the court  
24 for placement in an escrow account; or

25 (B) giving to the court a supersedeas bond that  
26 is approved by the court for the amount of the penalty and that is  
27 effective until all judicial review of the order is final; or

1           (2) request the court to stay enforcement of the  
2 penalty by:

3                   (A) filing with the court a sworn affidavit of  
4 the person stating that the person is financially unable to pay the  
5 amount of the penalty and is financially unable to give the  
6 supersedeas bond; and

7                   (B) giving a copy of the affidavit to the  
8 department [~~executive director~~] by certified mail.

9           (m) On receipt of a copy of an affidavit under Subsection  
10 (1)(2), the department [~~executive director~~] may file with the  
11 court, within five days after the date the copy is received, a  
12 contest to the affidavit. The court shall hold a hearing on the  
13 facts alleged in the affidavit as soon as practicable and shall stay  
14 the enforcement of the penalty on finding that the alleged facts are  
15 true. The person who files an affidavit has the burden of proving  
16 that the person is financially unable to pay the amount of the  
17 penalty and to give a supersedeas bond.

18           (n) If the person does not pay the amount of the penalty and  
19 the enforcement of the penalty is not stayed, the department  
20 [~~executive director~~] may refer the matter to the attorney general  
21 for collection of the amount of the penalty.

22           (b) Section 42.078, Human Resources Code, as amended by this  
23 section, applies to conduct that occurs on or after the effective  
24 date of this section. Conduct that occurs before the effective date  
25 of this section is governed by Section 42.078, Human Resources  
26 Code, as it existed before amendment by this section, and the former  
27 law is continued in effect for that purpose.

1 SECTION 1.105. The heading to Chapter 43, Human Resources  
2 Code, is amended to read as follows:

3 CHAPTER 43. REGULATION OF CHILD-CARE

4 AND CHILD-PLACING AGENCY ADMINISTRATORS

5 SECTION 1.106. Section 43.001, Human Resources Code, is  
6 amended by amending Subdivision (1) and adding Subdivisions (3) and  
7 (4) to read as follows:

8 (1) "Child-care institution" has the meaning assigned  
9 by Section 42.002 [~~means a profit or nonprofit children's home,~~  
10 ~~orphanage, institution, or other place that receives and provides~~  
11 ~~24-hour-a-day care for more than six children who are dependent,~~  
12 ~~neglected, handicapped, delinquent, in danger of becoming~~  
13 ~~delinquent, or in need of group care].~~

14 (3) "Child-placing agency" has the meaning assigned in  
15 Section 42.002.

16 (4) "Child-placing agency administrator" means a  
17 person who supervises and exercises direct control over a  
18 child-placing agency and who is responsible for the child-placing  
19 agency's program and personnel, regardless of whether the person  
20 has an ownership interest in the child-placing agency or shares  
21 duties with other persons.

22 SECTION 1.107. (a) Section 43.003, Human Resources Code,  
23 is amended by adding Subsection (c) to read as follows:

24 (c) A person may not serve as a child-placing agency  
25 administrator without a license issued by the department under this  
26 chapter.

27 (b) Notwithstanding Subsection (c), Section 43.003, Human

1 Resources Code, as added by this section, a person is not required  
2 to hold a license issued under Chapter 43, Human Resources Code, to  
3 act as a child-placing agency administrator until January 1, 2006.

4 SECTION 1.108. (a) Section 43.004, Human Resources Code,  
5 is amended to read as follows:

6 Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) To be  
7 eligible for a child-care administrator's license a person must:

8 (1) provide information for the department's use in  
9 conducting a criminal history and background check under Subsection  
10 (c) [~~present evidence in writing of good moral character, ethical~~  
11 ~~commitment, and sound physical and emotional health~~];

12 (2) pass an examination developed [~~devised~~] and  
13 administered by the department that demonstrates competence in the  
14 field of child-care administration;

15 (3) have one year of full-time experience in  
16 management or supervision of child-care personnel and programs; and

17 (4) have one of the following educational and  
18 experience qualifications:

19 (A) a master's or doctor of philosophy degree in  
20 social work or other area of study; or

21 (B) a bachelor's degree and two years' full-time  
22 experience in child care or a closely related field[~~+~~

23 [~~(C) an associate degree from a junior college~~  
24 ~~and four years' experience in child care or a closely related field,~~  
25 ~~or~~

26 [~~(D) a high school diploma or its equivalent and~~  
27 ~~six years' experience in child care or a closely related field].~~

1           (b) To be eligible for a child-placing agency  
2 administrator's license a person must:

3           (1) provide information for the department's use in  
4 conducting a criminal history and background check under Subsection  
5 (c);

6           (2) pass an examination developed and administered by  
7 the department that demonstrates competence in the field of placing  
8 children in residential settings or adoptive homes;

9           (3) have one year of full-time experience in  
10 management or supervision of child-placing personnel and programs;  
11 and

12           (4) have one of the following educational and  
13 experience qualifications:

14           (A) a master's or doctor of philosophy degree in  
15 social work or other area of study; or

16           (B) a bachelor's degree and two years' full-time  
17 experience in the field of placing children in residential settings  
18 or adoptive homes or a closely related field.

19           (c) Before the department issues a license under this  
20 chapter, the department must conduct a criminal history and  
21 background check of the applicant using:

22           (1) the information made available by the Department  
23 of Public Safety under Section 411.114, Government Code, or by the  
24 Federal Bureau of Investigation or other criminal justice agency  
25 under Section 411.087, Government Code; and

26           (2) the information in the central registry of  
27 reported cases of child abuse or neglect established under Section

1 261.002, Family Code.

2 (b) Subsection (a), Section 43.004, Human Resources Code,  
3 as added by this section, applies only to a person who applies for a  
4 license or license renewal on or after the effective date of this  
5 section.

6 SECTION 1.109. (a) Section 43.0041, Human Resources Code,  
7 is amended by adding Subsection (c) to read as follows:

8 (c) A person who fails an examination three times may not  
9 submit a new application for a license until after the first  
10 anniversary of the date the person last failed the examination.

11 (b) Subsection (c), Section 43.0041, Human Resources Code,  
12 as added by this section, applies only to an examination taken on or  
13 after the effective date of this section. An examination taken  
14 before the effective date of this section is not considered in  
15 determining whether a person is prohibited from seeking a new  
16 license for the period specified by Subsection (c), Section  
17 43.0041, Human Resources Code, as added by this section.

18 SECTION 1.110. Subsection (a), Section 43.0081, Human  
19 Resources Code, is amended to read as follows:

20 (a) The department may issue a provisional child-care  
21 administrator's license to an applicant licensed in another state  
22 who applies for a license in this state. An applicant for a  
23 provisional license under this section must:

24 (1) be licensed in good standing as a child-care  
25 administrator for at least two years in another state, the District  
26 of Columbia, a foreign country, or a territory of the United States  
27 that has licensing requirements that are substantially equivalent

1 to the requirements of this chapter;

2 (2) have passed a national or other examination  
3 recognized by the department that demonstrates competence in the  
4 field of child-care administration; and

5 (3) be sponsored by a person licensed by the  
6 department under this chapter with whom the provisional license  
7 holder may practice under this section.

8 SECTION 1.111. (a) Subsection (a), Section 43.009, Human  
9 Resources Code, is amended to read as follows:

10 (a) To be eligible for license renewal, a license holder  
11 shall present evidence to the department of participation in a  
12 program of continuing education for 15 [~~approximating 15 actual~~]  
13 hours of formal study each year during the two-year period before  
14 the renewal.

15 (b) Subsection (a), Section 43.009, Human Resources Code,  
16 as amended by this section, applies to a person who seeks license  
17 renewal on or after September 1, 2007. A person who seeks license  
18 renewal before September 1, 2007, is governed by the law in effect  
19 before amendment by this section, and the former law is continued in  
20 effect for that purpose.

21 SECTION 1.112. The heading to Section 43.010, Human  
22 Resources Code, is amended to read as follows:

23 Sec. 43.010. LICENSE DENIAL, REVOCATION, SUSPENSION, OR  
24 REFUSAL TO RENEW; REPRIMAND OR PROBATION.

25 SECTION 1.113. (a) Subsections (a), (b), and (d), Section  
26 43.010, Human Resources Code, are amended to read as follows:

27 (a) The department may deny, [~~shall~~] revoke, suspend, or

1 refuse to renew a license, or place on probation [~~a person whose~~  
2 ~~license has been suspended,~~] or reprimand a license holder for:

3 (1) violating [a violation by the license holder of]  
4 this chapter or a rule adopted under this chapter;

5 (2) circumventing or attempting to circumvent the  
6 requirements of this chapter or a rule adopted under this chapter;

7 (3) engaging in fraud or deceit related to the  
8 requirements of this chapter or a rule adopted under this chapter;

9 (4) providing false or misleading information to the  
10 department during the license application or renewal process for  
11 any person's license;

12 (5) making a statement about a material fact during  
13 the license application or renewal process that the person knows or  
14 should know is false;

15 (6) having a criminal history or central registry  
16 record that would prohibit a person from working in a child-care  
17 facility, as defined by Section 42.002, under rules applicable to  
18 that type of facility;

19 (7) using drugs or alcohol in a manner that  
20 jeopardizes the person's ability to function as an administrator;  
21 or

22 (8) [of the board.]

23 [~~(b) The department may revoke a license if the license~~  
24 ~~holder is:~~

25 [~~(1) convicted of a felony,~~

26 [~~(2) convicted of a misdemeanor involving fraud or~~  
27 ~~deceit,~~



1           ~~[(3) addicted to a dangerous drug or intemperate in~~  
2 ~~the use of alcohol; or~~

3           ~~[(4) grossly negligent in]~~ performing duties as a  
4 child-care administrator in a negligent manner.

5           (b) A person whose license is revoked under Subsection (a)  
6 is not eligible to apply for another license under this chapter.

7           (d) If a license holder is placed on probation [~~suspension~~  
8 ~~is probated~~], the department may require the license holder:

9           (1) to report regularly to the department on the  
10 conditions of the probation;

11           (2) to limit practice to the areas prescribed by the  
12 department; or

13           (3) to continue or renew professional education until  
14 the practitioner attains a degree of skill satisfactory to the  
15 department in those areas in which improvement is a condition of the  
16 probation.

17           (b) Subsection (b), Section 43.010, Human Resources Code,  
18 as amended by this section, applies only to a person whose license  
19 is revoked on or after the effective date of this section. A person  
20 whose license is revoked before the effective date of this section  
21 is governed by the law in effect at the time of the revocation, and  
22 the former law is continued in effect for that purpose.

23           SECTION 1.114. Section 43.0105, Human Resources Code, is  
24 amended to read as follows:

25           Sec. 43.0105. REVOCATION OF PROBATION. The department may  
26 revoke the probation of a license holder [~~whose license is~~  
27 ~~suspended~~] if the license holder violates a term of the conditions

1 of probation.

2 SECTION 1.115. Section 43.0106, Human Resources Code, is  
3 amended to read as follows:

4 Sec. 43.0106. ADMINISTRATIVE [~~DISCIPLINARY~~] HEARING.

5 (a) If the department denies a license or proposes to suspend,  
6 revoke, or refuse to renew a person's license, the person is  
7 entitled to a hearing conducted by the State Office of  
8 Administrative Hearings. Proceedings for a disciplinary action are  
9 governed by the administrative procedure law, Chapter 2001,  
10 Government Code. Rules of practice adopted by the executive  
11 commissioner [~~board~~] under Section 2001.004, Government Code,  
12 applicable to the proceedings for a disciplinary action may not  
13 conflict with rules adopted by the State Office of Administrative  
14 Hearings.

15 (b) A person may not continue to operate as a licensed  
16 child-care administrator or child-placing agency administrator  
17 during the appeal process if the department determines that the  
18 person is an immediate threat to the health or safety of a child.

19 (c) The department must notify the person, and if  
20 applicable, the governing body of the facility that employs the  
21 person, of the department's determination under Subsection (b).

22 SECTION 1.116. Section 43.012, Human Resources Code, is  
23 amended to read as follows:

24 Sec. 43.012. PENALTY. A person who serves as a child-care  
25 or child-placing agency administrator without the license required  
26 by this chapter commits a Class C misdemeanor.

27 SECTION 1.117. Subdivision (3), Article 56.01, Code of

1 Criminal Procedure, is amended to read as follows:

2 (3) "Victim" means a person who is the victim of the  
3 offense of sexual assault, kidnapping, ~~[or]~~ aggravated robbery, or  
4 injury to a child, elderly individual, or disabled individual or  
5 who has suffered bodily injury or death as a result of the criminal  
6 conduct of another.

7 SECTION 1.118. (a) Section 22.04, Penal Code, is amended  
8 by amending Subsections (b) through (g) and adding Subsection (a-1)  
9 to read as follows:

10 (a-1) A person commits an offense if the person is an owner,  
11 operator, or employee of a group home, nursing facility, assisted  
12 living facility, intermediate care facility for persons with mental  
13 retardation, or other institutional care facility and the person  
14 intentionally, knowingly, recklessly, or with criminal negligence  
15 by omission causes to a child, elderly individual, or disabled  
16 individual who is a resident of that group home or facility:

- 17 (1) serious bodily injury;  
18 (2) serious mental deficiency, impairment, or injury;  
19 (3) bodily injury; or  
20 (4) exploitation.

21 (b) An omission that causes a condition described by  
22 Subsection (a)(1), (2), or (3) or (a-1)(1), (2), (3), or (4)  
23 ~~[Subsections (a)(1) through (a)(3)]~~ is conduct constituting an  
24 offense under this section if:

- 25 (1) the actor has a legal or statutory duty to act; or  
26 (2) the actor has assumed care, custody, or control of  
27 a child, elderly individual, or disabled individual.

1 (c) In this section:

2 (1) "Child" means a person 14 years of age or younger.

3 (2) "Elderly individual" means a person 65 years of  
4 age or older.

5 (3) "Disabled individual" means a person older than 14  
6 years of age who by reason of age or physical or mental disease,  
7 defect, or injury is substantially unable to protect himself from  
8 harm or to provide food, shelter, or medical care for himself.

9 (4) "Exploitation" means the illegal or improper use  
10 of an individual or of the resources of the individual for monetary  
11 or personal benefit, profit, or gain.

12 (d) For purposes of an omission that causes a condition  
13 described by Subsection (a)(1), (2), or (3), the [The] actor has  
14 assumed care, custody, or control if he has by act, words, or course  
15 of conduct acted so as to cause a reasonable person to conclude that  
16 he has accepted responsibility for protection, food, shelter, and  
17 medical care for a child, elderly individual, or disabled  
18 individual. For purposes of an omission that causes a condition  
19 described by Subsection (a-1)(1), (2), (3), or (4), the actor  
20 acting during the actor's capacity as owner, operator, or employee  
21 of a group home or facility described by Subsection (a-1) is  
22 considered to have accepted responsibility for protection, food,  
23 shelter, and medical care for the child, elderly individual, or  
24 disabled individual who is a resident of the group home or facility.

25 (e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or  
26 (2) is a felony of the first degree when the conduct is committed  
27 intentionally or knowingly. When the conduct is engaged in

1 recklessly, the offense is [~~it shall be~~] a felony of the second  
2 degree.

3 (f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is  
4 a felony of the third degree when the conduct is committed  
5 intentionally or knowingly. When the conduct is engaged in  
6 recklessly, the offense is [~~it shall be~~] a state jail felony.

7 (g) An offense under Subsection (a) is a state jail felony  
8 when the person acts with criminal negligence [~~shall be a state jail~~  
9 ~~felony~~]. An offense under Subsection (a-1) is a state jail felony  
10 when the person, with criminal negligence and by omission, causes a  
11 condition described by Subsection (a-1)(1), (2), (3), or (4).

12 (b) The change in law made by this section applies only to an  
13 offense committed on or after the effective date of this section.  
14 An offense committed before the effective date of this section is  
15 covered by the law in effect when the offense was committed, and the  
16 former law is continued in effect for that purpose. For the  
17 purposes of this subsection, an offense was committed before the  
18 effective date of this section if any element of the offense was  
19 committed before that date.

20 SECTION 1.119. AT-RISK PREVENTION SERVICES TASK FORCE.

21 (a) In this section:

22 (1) "Department" means the Department of Family and  
23 Protective Services.

24 (2) "Executive commissioner" means the executive  
25 commissioner of the Health and Human Services Commission.

26 (3) "Prevention service" means a community-based  
27 prevention program to alleviate the conditions that lead to child

1 abuse or neglect and juvenile crime.

2 (4) "Task force" means the at-risk prevention services  
3 task force established under this section.

4 (b) The at-risk prevention services task force is  
5 established to create a strategic plan to improve the availability  
6 of prevention services in this state and the manner in which those  
7 services are provided.

8 (c) The task force is composed of 11 members appointed by  
9 the governor.

10 (d) Each member of the task force must have demonstrated  
11 experience in the prevention of child abuse or neglect, or juvenile  
12 crime. Consideration shall be given to inclusion of prevention  
13 service providers, research professionals, representatives from  
14 mental health and juvenile justice fields, and the judicial system.  
15 One member of the task force must be a person who was formerly a  
16 child in foster care.

17 (e) The task force shall:

18 (1) examine the provision of prevention services in  
19 this state and identify gaps in services and opportunities to  
20 coordinate service delivery;

21 (2) identify federal, state, and community sources of  
22 funding for prevention services and methods for combining resources  
23 for those services; and

24 (3) create a strategic plan that would address current  
25 gaps in services and would result in the extension of prevention  
26 services that are evidence-based and utilize best practices to more  
27 at-risk families in this state.

1           (f) To the extent that money is appropriated for this  
2 purpose, the department shall establish and administer a child  
3 abuse and neglect prevention grant program that addresses gaps and  
4 strategies recommended by the task force. The grant program shall  
5 fund evidence-based programs offered by community-based or county  
6 organizations that are designed to prevent or ameliorate child  
7 abuse and neglect. The task force shall advise the department in  
8 the evaluation of the evidence-based abuse and neglect prevention  
9 programs to determine the continued effectiveness of the programs.

10           (g) The department shall provide administrative support and  
11 services to the task force.

12           (h) Not later than September 1, 2006, the task force shall  
13 present to the department and executive commissioner the strategic  
14 plan created under Subsection (e) of this section.

15           (i) Not later than the 90th day after the date on which the  
16 task force presents the strategic plan, the executive commissioner  
17 shall submit to the governor, the lieutenant governor, the speaker  
18 of the house of representatives, and the presiding officer of each  
19 house and senate standing committee having jurisdiction over family  
20 protective services a written report concerning the strategic plan  
21 of the task force. The report shall include:

22                   (1) recommendations for implementing the strategic  
23 plan of the task force, if appropriate;

24                   (2) recommendations for modifications to the  
25 strategic plan of the task force; and

26                   (3) recommendations for legislation that the task  
27 force or executive commissioner considers necessary to implement

1 the strategic plan.

2 (j) This section expires and the task force is abolished  
3 June 1, 2007.

4 SECTION 1.120. THINK TANK MEETING ON CHILD ABUSE AND  
5 NEGLECT INVESTIGATIONS. Not later than January 1, 2006, the  
6 Department of Family and Protective Services shall conduct a  
7 meeting with employees of the department and law enforcement  
8 professionals who have responsibility for investigating reports of  
9 child abuse and neglect to explore standards for:

10 (1) training to be provided for personnel who conduct  
11 investigations of child abuse and neglect, including techniques for  
12 interviewing, investigating, and communicating with children with  
13 disabilities;

14 (2) protocols for conducting investigations; and

15 (3) the coordination of investigations between the  
16 department and law enforcement agencies.

17 SECTION 1.121. CASEWORKER FUNCTION STUDY. (a) The  
18 Department of Family and Protective Services shall conduct a study  
19 on the merits of revising the functions performed by caseworkers  
20 employed by the department. In conducting the study required by  
21 this section, the department shall explore the benefits of using  
22 one caseworker to coordinate efforts on behalf of the child and the  
23 child's parents.

24 (b) The department shall report the results of the study  
25 conducted under Subsection (a) of this section to the lieutenant  
26 governor and the speaker of the house of representatives not later  
27 than January 1, 2006.



1           SECTION 1.122. USE OF LOCAL CASEWORKERS. If the Department  
2 of Family and Protective Services places a child in a home in an  
3 administrative region other than the region in which the child's  
4 caseworker is located, the department shall consider using a  
5 caseworker from the region in which the child is placed to conduct  
6 home visits for that child.

7           SECTION 1.123. STUDY OF CHILD PROTECTIVE SERVICES AND ADULT  
8 PROTECTIVE SERVICES CERTIFICATION FOR PEACE OFFICERS. (a) In this  
9 section, "peace officer" means a person elected, employed, or  
10 appointed as a peace officer under Article 2.12, Code of Criminal  
11 Procedure, or other law.

12           (b) The Commission on Law Enforcement Officer Standards and  
13 Education shall study the feasibility of issuing certificates of  
14 professional achievement or proficiency to peace officers who  
15 receive specialized training for law enforcement assignments  
16 related to child protective services or adult protective services.  
17 The commission must consider:

18           (1) the need for specialized training of peace  
19 officers who work with issues related to child protective services  
20 or adult protective services;

21           (2) the feasibility of creating and administering the  
22 proposed certification;

23           (3) potential incentives, including financial  
24 incentives, that may encourage peace officers to obtain the  
25 certification; and

26           (4) the development of required training for the  
27 certification that will address the legal, social, and operational

1 issues that peace officers are likely to encounter when working  
2 with children or aging persons.

3 (c) In conducting the study, the Commission on Law  
4 Enforcement Officer Standards and Education shall seek the  
5 participation of:

6 (1) state agency employees and peace officers who  
7 currently work with issues related to child protective services and  
8 adult protective services;

9 (2) community advocates for children and aging  
10 persons; and

11 (3) other interested persons.

12 (d) Not later than September 1, 2006, the Commission on Law  
13 Enforcement Officer Standards and Education shall submit to the  
14 legislature a report regarding the results of the study conducted  
15 under this section.

16 SECTION 1.124. The following provisions of the Human  
17 Resources Code are repealed:

18 (1) Subdivision (1), Section 40.001;

19 (2) Section 40.028;

20 (3) Section 40.029;

21 (4) Subsections (b), (c), and (e), Section  
22 40.0305;

23 (5) Subsection (c), Section 40.0525, Human Resources  
24 Code; and

25 (6) Subsection (c), Section 43.010.

26 ARTICLE 2. ADULT PROTECTIVE SERVICES

27 SECTION 2.01. Subchapter B, Chapter 40, Human Resources

1 Code, is amended by adding Section 40.0315 to read as follows:

2 Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE  
3 SERVICES. (a) The adult protective services division of the  
4 department shall maintain an investigation unit to investigate  
5 allegations of abuse, neglect, and exploitation of elderly and  
6 disabled persons reported to the division.

7 (b) An investigator in the unit shall determine whether an  
8 elderly or disabled person who is the subject of a report made under  
9 Section 48.051(a) may have suffered from abuse, neglect, or  
10 exploitation as a result of the criminal conduct of another person.  
11 If the investigator determines that criminal conduct may have  
12 occurred, the investigator shall immediately notify the  
13 appropriate law enforcement agency.

14 (c) Not later than the 30th day after the date a law  
15 enforcement agency is notified by an investigator as provided by  
16 Subsection (b), the agency shall, if feasible, provide to the unit  
17 information regarding the disposition of the agency's  
18 investigation of the conduct that was the subject of the notice.

19 SECTION 2.02. Subchapter B, Chapter 40, Human Resources  
20 Code, is amended by adding Section 40.0323 to read as follows:

21 Sec. 40.0323. QUALIFICATIONS FOR ADULT PROTECTIVE SERVICES  
22 PERSONNEL. (a) In hiring department employees whose duties  
23 include providing services as part of, or relating to, the  
24 provision of adult protective services directly to an elderly or  
25 disabled person, the commissioner shall ensure that the department  
26 gives preference to applicants with professional credentials  
27 related to adult protective services, including applicants who are

1 licensed master social workers, as defined by Section 505.002,  
2 Occupations Code, or licensed professional counselors.

3 (b) Subject to the availability of funds, the executive  
4 commissioner by rule shall develop and the department shall  
5 implement an incentive program to encourage each department  
6 employee whose duties include the duties described by Subsection  
7 (a) to obtain professional credentials described by that subsection  
8 if the employee does not have those credentials.

9 SECTION 2.03. Subchapter B, Chapter 40, Human Resources  
10 Code, is amended by adding Section 40.035 to read as follows:

11 Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE  
12 SERVICES; CONTINUING EDUCATION. (a) The department shall develop  
13 and implement a training program that each newly hired or assigned  
14 department employee must complete before:

15 (1) initiating an investigation of a report of alleged  
16 abuse, neglect, or exploitation of an elderly or disabled person  
17 under Chapter 48; or

18 (2) providing protective services to elderly or  
19 disabled persons under that chapter.

20 (b) The training program must:

21 (1) provide the person with appropriate comprehensive  
22 information regarding:

23 (A) the incidence and types of reports of abuse,  
24 neglect, and exploitation of elderly or disabled persons that are  
25 received by the department, including information concerning false  
26 reports; and

27 (B) the use and proper implementation of:

1                   (i) the risk assessment criteria developed  
2 under Section 48.004; and

3                   (ii) the legal procedures available under  
4 Chapter 48 for the protection of elderly or disabled persons,  
5 including the procedures for obtaining a court order for emergency  
6 protective services under Section 48.208;

7                   (2) include best practices for management of a case  
8 from the intake process to the provision of protective services, if  
9 any, including criteria that specify the circumstances under which  
10 an employee should:

11                   (A) consult a supervisor regarding a case; or

12                   (B) refer an elderly or disabled person to an  
13 appropriate public agency or community service provider for  
14 guardianship or other long-term services after the delivery of  
15 protective services to that person has been completed;

16                   (3) provide appropriate specialized training in any  
17 necessary topics, including:

18                   (A) investigation of suspected financial  
19 exploitation and self-neglect; and

20                   (B) establishment and maintenance of working  
21 relationships with community organizations and other local  
22 providers who provide services to elderly and disabled persons;

23                   (4) include on-the-job training, which must require:

24                   (A) a supervisor to accompany and train a  
25 department caseworker in the field throughout the first case  
26 assigned to the caseworker; and

27                   (B) the supervisor to make a detailed, written

1 progress report regarding the caseworker's performance during a  
2 three-month review period that:

3 (i) identifies the strengths and weaknesses  
4 of the caseworker that the supervisor observed during that period;  
5 and

6 (ii) specifies the policies and tools the  
7 caseworker used during that period;

8 (5) provide for the development of individualized  
9 training plans;

10 (6) include training in working with law enforcement  
11 agencies and the court system when legal intervention is sought for  
12 investigations or emergency orders; and

13 (7) to the maximum extent possible, include nationally  
14 recognized best practices in addition to the best practices  
15 required under Subdivision (2).

16 (c) The department at least annually shall provide  
17 comprehensive case management training to supervisors of  
18 department employees who conduct investigations under Chapter 48.  
19 The training must be designed to enable the supervisors to provide  
20 guidance on investigations of reports of alleged abuse, neglect, or  
21 exploitation that are complex or present unique problems.

22 (d) The department shall develop and implement appropriate  
23 continuing education programs for employees of the adult protective  
24 services division who have completed initial training under this  
25 section. The continuing education programs must include nationally  
26 recognized best practices to the maximum extent possible and must  
27 be designed to provide an annual update regarding changes in:

1           (1) adult protective services division policies and  
2 procedures; and

3           (2) applicable law, including statutory changes  
4 affecting the adult protective services division or elderly or  
5 disabled persons served by the division.

6           (e) A department employee required to participate in a  
7 continuing education program under this section must complete the  
8 program at least once each calendar year.

9           (f) The department shall:

10           (1) make curriculum developed for a training or  
11 continuing education program under this section readily available  
12 to department employees in written form; and

13           (2) periodically revise a training and continuing  
14 education program established under this section as necessary to  
15 satisfy training needs identified by the department or department  
16 employees.

17           (g) The circumstances specified under Subsection (b)(2)  
18 under which an employee should consult a supervisor regarding a  
19 case must be consistent with the risk assessment criteria developed  
20 under Section 48.004 that require consultation with a supervisor.

21           (h) The executive commissioner by rule shall provide  
22 policies and procedures by which the department incorporates  
23 examples of actual cases investigated by the department in the  
24 training programs under this section for use as training tools.

25           (i) In implementing the training program and continuing  
26 education programs under this section, the department, to the  
27 maximum extent possible, shall contract with persons who are not

1 department employees to conduct the programs.

2 SECTION 2.04. (a) Subchapter C, Chapter 40, Human  
3 Resources Code, is amended by adding Section 40.0515 to read as  
4 follows:

5 Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT  
6 PROTECTIVE SERVICES; QUARTERLY REPORTS. (a) The department shall  
7 develop and implement a quality assurance program for adult  
8 protective services provided by or on behalf of the department.

9 (b) In developing the program, the department shall  
10 establish:

11 (1) client-centered outcome measures for each of the  
12 following functions of the adult protective services program:

- 13 (A) intake process;
- 14 (B) investigations;
- 15 (C) risk assessment determinations; and
- 16 (D) delivery of protective services;

17 (2) minimum job performance standards for personnel  
18 and each work department of the adult protective services division  
19 of the department; and

20 (3) procedures for conducting periodic performance  
21 reviews to monitor compliance with the standards established under  
22 Subdivision (2), which must include requirements that, for each  
23 caseworker in the adult protective services division of the  
24 department, a supervisor shall conduct:

- 25 (A) at least two performance reviews each year,  
26 if the employee has less than two years of adult protective services  
27 casework experience; and



1           (B) at least one performance review each year, if  
2 the employee has at least two years of adult protective services  
3 casework experience.

4           (c) The department shall promptly address a person's or work  
5 department's failure to meet minimum job performance standards  
6 established under Subsection (b)(2):

7           (1) by issuing to the person or work department, as  
8 appropriate, a corrective action plan detailing the actions  
9 required to comply with the standards; or

10           (2) if necessary, through disciplinary action,  
11 including a person's demotion or discharge, for repeated failure to  
12 meet the standards.

13           (d) A performance review conducted under Subsection (b)(3)  
14 is considered a performance evaluation for purposes of Section  
15 40.032(c). The department shall ensure that disciplinary or other  
16 corrective action is taken against a supervisor or other managerial  
17 employee who is required to conduct a performance evaluation under  
18 Section 40.032(c) or a performance review under Subsection (b)(3)  
19 and who fails to complete that evaluation or review in a timely  
20 manner.

21           (e) The annual performance evaluation required under  
22 Section 40.032(c) of the performance of a supervisor in the adult  
23 protective services division must:

24           (1) be performed by an appropriate program  
25 administrator; and

26           (2) include:

27           (A) an evaluation of the supervisor with respect

1 to the job performance standards applicable to the supervisor's  
2 assigned duties; and

3 (B) an evaluation of the supervisor with respect  
4 to the compliance of employees supervised by the supervisor with  
5 the job performance standards applicable to those employees'  
6 assigned duties.

7 (f) A summary of the findings of outcome measures  
8 established and performance reviews conducted under this section  
9 must be reported to regional directors and other senior management  
10 employees of the adult protective services division.

11 (g) Each fiscal quarter the department shall file with the  
12 governor and the presiding officer of each house of the legislature  
13 a report that includes:

14 (1) a comprehensive review of the adult protective  
15 services division's overall performance during the preceding  
16 quarter; and

17 (2) a summary of the adult protective services  
18 division's performance during the preceding quarter on each of the  
19 outcome measures established under Subsection (b)(1).

20 (b) The Department of Family and Protective Services shall  
21 submit the initial report required under Section 40.0515, Human  
22 Resources Code, as added by this section, not later than October 1,  
23 2005.

24 SECTION 2.05. Subdivision (4), Subsection (a), Section  
25 48.002, Human Resources Code, is amended to read as follows:

26 (4) "Neglect" means the failure to provide for one's  
27 self the goods or services, including medical services, which are

1 necessary to avoid physical or emotional harm or pain or the failure  
2 of a caretaker to provide such goods or services. This term  
3 includes a person leaving a facility that provides medical care,  
4 against medical advice, if leaving places the person at imminent  
5 risk of physical or emotional harm and a physician has issued a  
6 written letter or certificate stating the person is not mentally  
7 competent.

8 SECTION 2.06. Subchapter A, Chapter 48, Human Resources  
9 Code, is amended by adding Section 48.004 to read as follows:

10 Sec. 48.004. RISK ASSESSMENT. The executive commissioner  
11 by rule shall develop and maintain risk assessment criteria for use  
12 by department personnel in determining whether an elderly or  
13 disabled person is in imminent risk of abuse, neglect, or  
14 exploitation or in a state of abuse, neglect, or exploitation and  
15 needs protective services. The criteria must:

16 (1) provide for a comprehensive assessment of the  
17 person's:

18 (A) environmental, physical, medical, mental  
19 health, and financial condition;

20 (B) social interaction and support; and

21 (C) need for legal intervention; and

22 (2) specify the circumstances under which a caseworker  
23 must consult with a supervisor regarding a case.

24 SECTION 2.07. Subchapter A, Chapter 48, Human Resources  
25 Code, is amended by adding Sections 48.005 and 48.006 to read as  
26 follows:

27 Sec. 48.005. MAINTENANCE OF RECORDS. Notwithstanding

1 Chapter 441, Government Code, or any other law, the department  
2 shall maintain in an electronic format a summary of all records  
3 related to investigations of reports made under Section 48.051 that  
4 includes only critical information with respect to those  
5 investigations that will enable the department to research the  
6 history of a person's involvement in the investigated cases.

7 Sec. 48.006. COMMUNITY SATISFACTION SURVEY. (a) The  
8 department shall develop a community satisfaction survey that  
9 solicits information regarding the department's performance with  
10 respect to providing investigative and adult protective services.  
11 In each region, the department shall send the survey at least  
12 annually to:

13 (1) stakeholders in the adult protective services  
14 system, including local law enforcement agencies and prosecutors'  
15 offices;

16 (2) protective services agencies, including nonprofit  
17 agencies; and

18 (3) courts with jurisdiction over probate matters.

19 (b) The department shall send the results of each region's  
20 survey to:

21 (1) the region for evaluation by regional and program  
22 administrators and implementation of changes necessary to address  
23 community concerns;

24 (2) the presiding judge of the statutory probate  
25 courts in that region; and

26 (3) courts with jurisdiction over probate matters in  
27 that region.

1       (c) The department may not include any confidential  
2 information in the results of the survey provided under Subsection  
3 (b)(2) or (3) unless ordered by a court.

4       SECTION 2.08. Section 48.051, Human Resources Code, is  
5 amended by adding Subsection (e) to read as follows:

6       (e) If a person who makes a report under this section  
7 chooses to give self-identifying information, the caseworker who  
8 investigates the report shall contact the person if necessary to  
9 obtain any additional information required to assist the person who  
10 is the subject of the report.

11       SECTION 2.09. Section 48.101, Human Resources Code, is  
12 amended by amending Subsections (d) and (e) and adding Subsections  
13 (d-1), (e-1), (g), and (g-1) to read as follows:

14       (d) The executive commissioner shall adopt rules providing  
15 [department or investigating state agency by rule shall provide]  
16 for the release, on request, to a person who is the subject of a  
17 report of abuse, neglect, or exploitation or to that person's legal  
18 representative of otherwise confidential information relating to  
19 that report. The department or investigating state agency shall  
20 edit the information before release to protect the confidentiality  
21 of information relating to the reporter's identity and to protect  
22 any other individual whose safety or welfare may be endangered by  
23 disclosure.

24       (d-1) Subject to Subsection (e-1), the executive  
25 commissioner shall adopt rules providing for the release, on  
26 request, by the department or investigating state agency of  
27 otherwise confidential information relating to a person who is the

1 subject of a report or investigation of abuse, neglect, or  
2 exploitation or to whom the department has provided protective  
3 services, to:

4 (1) a court that has a matter pending before it that  
5 involves the person;

6 (2) the attorney ad litem or any other legal  
7 representative, other than a guardian, appointed for the person;  
8 and

9 (3) the person's legal guardian.

10 (e) The executive commissioner [~~department or investigating~~  
11 ~~state agency~~] may adopt rules relating to the release of  
12 information by the department or investigating state agency that is  
13 contained in the record of a deceased individual who was the subject  
14 of an investigation conducted by the department or investigating  
15 state agency or to whom the department has provided protective  
16 services. The rules must be consistent with the purposes of this  
17 chapter and any applicable state or federal law. The executive  
18 commissioner shall adopt rules, subject to Subsection (e-1), that  
19 provide for the release, on request, of otherwise confidential  
20 information in the deceased person's record to the personal  
21 representative appointed for the person's estate.

22 (e-1) Information released by the department or an  
23 investigating state agency under Subsection (d-1) or to a personal  
24 representative under Subsection (e) may not include the identity of  
25 the person who made the report of abuse, neglect, or exploitation.

26 (g) The department may establish procedures to exchange  
27 with a community service provider or local governmental entity

1 confidential information relating to a report made under Section  
2 48.051(a) that is necessary for the department, provider, or entity  
3 to provide protective services, health care services, housing  
4 services, or social services to the person who is the subject of the  
5 report. An exchange of information under this subsection does not  
6 affect whether the information is subject to disclosure under  
7 Chapter 552, Government Code.

8 (g-1) The executive commissioner by rule shall provide  
9 policies and procedures that are designed to guard against the  
10 unauthorized release or dissemination of confidential information  
11 that is exchanged under Subsection (g).

12 SECTION 2.10. (a) Subchapter D, Chapter 48, Human  
13 Resources Code, is amended by adding Section 48.1521 to read as  
14 follows:

15 Sec. 48.1521. INVESTIGATION OF COMPLEX CASES. (a) The  
16 department shall develop and implement a system to ensure that, to  
17 the greatest extent possible, investigations conducted by the  
18 department that involve especially complex issues of abuse,  
19 neglect, or exploitation, such as issues associated with  
20 self-neglect, mental health, or financial exploitation, are:

21 (1) assigned to personnel who have experience and  
22 training in those issues; and

23 (2) monitored by a special task unit for complex  
24 cases.

25 (b) Each county with a population of 250,000 or more shall  
26 appoint persons to serve as standing members of a special task unit  
27 to monitor cases that arise in the county and require monitoring as

1 provided by Subsection (a). The standing members of each special  
2 task unit must include:

3 (1) a provider of mental health services or aging  
4 services or a representative of a nonprofit entity serving persons  
5 with disabilities;

6 (2) a representative of a law enforcement agency; and

7 (3) a legal expert.

8 (c) In addition to the standing members specified by  
9 Subsection (b), the special task unit:

10 (1) must include, for purposes of monitoring a  
11 particular case, the caseworker on the case and the caseworker's  
12 supervisor; and

13 (2) may include a financial forensics expert and any  
14 other person with expertise that would be useful in monitoring a  
15 particular case.

16 (d) The department shall develop and make available to each  
17 county described by Subsection (b) a manual to assist the county in  
18 establishing and operating the special task unit required by this  
19 section. The manual must describe:

20 (1) the purpose and potential benefits of the unit;

21 (2) a description of the monitoring process the unit  
22 is expected to follow and potential problems the unit may  
23 encounter;

24 (3) the composition and administration of the unit;  
25 and

26 (4) the department's criteria for selecting cases to  
27 be monitored by the unit.



1       (e) Before the special task unit makes a recommendation that  
2 a guardian be appointed for a person in a case being monitored by  
3 the unit, the unit shall thoroughly consider all less-restrictive  
4 alternatives for legal intervention in the case.

5       (b) Subchapter D, Chapter 48, Human Resources Code, is  
6 amended by adding Section 48.1521 to read as follows:

7       Sec. 48.1521. INVESTIGATION OF COMPLEX CASES. (a) In this  
8 section, "local aging and disabled authority" means a local aging  
9 and disabled authority that provides aging and disabled services in  
10 a local service region under Subchapter M, Chapter 531, Government  
11 Code.

12       (b) The department shall develop and implement a system to  
13 ensure that, to the greatest extent possible, investigations  
14 conducted by the department that involve especially complex issues  
15 of abuse, neglect, or exploitation, such as issues associated with  
16 self-neglect, mental health, or financial exploitation, are:

17               (1) assigned to personnel who have experience and  
18 training in those issues; and

19               (2) monitored by a special task unit for complex  
20 cases.

21       (c) Each local aging and disabled authority shall appoint  
22 persons to serve as standing members of a special task unit to  
23 monitor cases that arise in the authority's local service region  
24 and require monitoring as provided by Subsection (b). The standing  
25 members of each special task unit must include:

26               (1) a provider of mental health services or aging  
27 services or a representative of a nonprofit entity serving persons

1 with disabilities;

2 (2) a representative of a law enforcement agency; and

3 (3) a legal expert.

4 (d) In addition to the standing members specified by  
5 Subsection (c), the special task unit:

6 (1) must include, for purposes of monitoring a  
7 particular case, the caseworker on the case and the caseworker's  
8 supervisor; and

9 (2) may include a financial forensics expert and any  
10 other person with expertise that would be useful in monitoring a  
11 particular case.

12 (e) The department shall develop and make available to each  
13 local aging and disabled authority a manual to assist the authority  
14 in establishing and operating the special task unit required by  
15 this section. The manual must describe:

16 (1) the purpose and potential benefits of the unit;

17 (2) a description of the monitoring process the unit  
18 is expected to follow and potential problems the unit may  
19 encounter;

20 (3) the composition and administration of the unit;  
21 and

22 (4) the department's criteria for selecting cases to  
23 be monitored by the unit.

24 (f) Before the special task unit makes a recommendation that  
25 a guardian be appointed for a person in a case being monitored by  
26 the unit, the unit shall thoroughly consider all less-restrictive  
27 alternatives for legal intervention in the case.

1 (c) The Department of Family and Protective Services shall  
2 develop the manual required by Subsection (d), Section 48.1521,  
3 Human Resources Code, as added by Subsection (a) of this section, or  
4 Subsection (e), Section 48.1521, Human Resources Code, as added by  
5 Subsection (b) of this section, as soon as possible after the  
6 effective date of this article. In developing the manual, the  
7 department shall use Wisconsin's Elder Abuse Interdisciplinary  
8 Team Manual as a model.

9 (d) Section 48.1521, Human Resources Code, as added by  
10 Subsection (a) of this section, takes effect only if neither Senate  
11 Bill 194 nor House Bill 470, proposed by the 79th Legislature,  
12 Regular Session, 2005, relating to the local delivery of aging,  
13 disability, behavioral health, and mental retardation services, is  
14 enacted and becomes law. If Senate Bill 194 or House Bill 470 is  
15 enacted and becomes law, Subsection (a) of this section has no  
16 effect and Section 48.1521, Human Resources Code, as added by  
17 Subsection (b) of this section, takes effect. If neither bill is  
18 enacted or becomes law, Subsection (b) of this section has no  
19 effect.

20 SECTION 2.11. Subchapter D, Chapter 48, Human Resources  
21 Code, is amended by adding Section 48.1522 to read as follows:

22 Sec. 48.1522. MANAGEMENT REVIEW FOLLOWING CERTAIN  
23 INVESTIGATIONS. If the department receives and investigates a  
24 report made under Section 48.051, the subject of which is a person  
25 with respect to whom the department received and investigated two  
26 previous reports under that section and closed those  
27 investigations, an adult protective services supervisor shall:

- 1           (1) classify the case as a recidivist case;
- 2           (2) review the reports and investigation files
- 3 concerning that person; and
- 4           (3) assist the caseworker and supervisor
- 5 investigating the third report in developing a long-term plan for
- 6 resolving the issues involved in the case.

7           SECTION 2.12. Subchapter D, Chapter 48, Human Resources  
8 Code, is amended by adding Section 48.158 to read as follows:

9           Sec. 48.158. STATUS REPORT OF INVESTIGATION.

10 (a) Notwithstanding any other law, the department, on written  
11 request, shall provide to a person who makes a report of alleged  
12 abuse, neglect, or exploitation under Section 48.051(a)  
13 information on the status of the investigation conducted with  
14 respect to the report, unless the department determines that  
15 providing the information would:

- 16           (1) jeopardize the investigation; or
- 17           (2) endanger the safety or welfare of the person who is
- 18 the subject of the report.

19           (b) For purposes of Subsection (a), the status of an  
20 investigation must be designated as:

- 21           (1) ongoing;
- 22           (2) closed, with a determination that the person who
- 23 was the subject of the report needs protective services; or
- 24           (3) closed, with a determination that the person who
- 25 was the subject of the report does not need protective services.

26           (c) The information provided under Subsection (a) must  
27 include information relating to whether protective services are

1 being provided to the person who was the subject of the report.

2 SECTION 2.13. Subchapter D, Chapter 48, Human Resources  
3 Code, is amended by adding Section 48.159 to read as follows:

4 Sec. 48.159. INTERNAL REVIEW OF DEPARTMENT INVESTIGATION.

5 (a) The department shall establish procedures for conducting an  
6 internal review of completed investigations conducted by the  
7 department under this chapter to:

8 (1) determine whether information obtained during the  
9 intake process was sufficient and accurate;

10 (2) assess whether telephone calls were appropriately  
11 routed;

12 (3) assess whether investigations were appropriately  
13 classified and prioritized;

14 (4) evaluate the case reports for any special issues  
15 or requirements;

16 (5) assess whether appropriate law enforcement  
17 agencies were notified of any suspected criminal conduct; and

18 (6) identify other relevant information to enable the  
19 department to take any corrective action necessary to improve the  
20 process of conducting investigations under this chapter.

21 (b) The department shall ensure that an internal review of a  
22 completed investigation is conducted before the investigation is  
23 closed or before the case results in the delivery of protective  
24 services.

25 SECTION 2.14. Section 48.202, Human Resources Code, is  
26 amended to read as follows:

27 Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY.

1 (a) In an investigation the department or state agency, as  
2 appropriate, shall determine:

3 (1) whether the person needs protective services from  
4 the department;

5 (2) what services are needed;

6 (3) whether services are available from the  
7 department, from the state agency, or in the community and how they  
8 can be provided;

9 (4) whether the person, acting alone, would be capable  
10 of obtaining needed services and could bear the cost or would be  
11 eligible for services from the department or state agency;

12 (5) whether a caretaker would be willing to provide  
13 services or would agree to their provision [~~provisions~~];

14 (6) whether the elderly or disabled person desires the  
15 services; [~~and~~]

16 (7) whether the person needs legal intervention to  
17 resolve the person's abuse, neglect, or exploitation and, if so,  
18 what type of intervention is needed; and

19 (8) other pertinent data.

20 (b) If the department or state agency, as appropriate,  
21 determines under Subsection (a)(1) that a person needs protective  
22 services, the department or agency shall, in determining how those  
23 services can be provided as required by Subsection (a)(3),  
24 determine whether the person is eligible for community-based  
25 long-term care services and whether those services are available.  
26 If the person is eligible for those services, but the services are  
27 not immediately available, the department or state agency shall

1 ensure that the person is placed on an appropriate waiting list for  
2 the services and that the person's abuse, neglect, or exploitation  
3 is resolved before the department closes the case.

4 SECTION 2.15. Subchapter E, Chapter 48, Human Resources  
5 Code, is amended by adding Section 48.2055 to read as follows:

6 Sec. 48.2055. TEMPORARY EMERGENCY SHELTERS. (a) The  
7 department, in conjunction with the Department of Aging and  
8 Disability Services and the Department of State Health Services,  
9 shall develop and implement a program to provide, subject to  
10 availability of funds, temporary emergency shelter to an elderly or  
11 disabled person for whom the department obtains an emergency order  
12 under Section 48.208 requiring that the person be moved to safer  
13 surroundings.

14 (b) The department, the Department of Aging and Disability  
15 Services, and the Department of State Health Services shall enter  
16 into a memorandum of understanding to clearly define the  
17 responsibilities of each agency under this section.

18 (c) Temporary emergency shelter under this section:

19 (1) may not be provided for more than 30 days; and

20 (2) must be provided in a community-based facility  
21 that is the least restrictive environment available, if possible.

22 (d) If temporary emergency shelter described by Subsection  
23 (c)(2) is not available and a person is placed in an institution,  
24 including a nursing facility, an ICF-MR, as defined by Section  
25 531.002, Health and Safety Code, and an institution for the  
26 mentally retarded licensed by a health and human services agency,  
27 as defined by Section 531.001, Government Code, the department

1 shall ensure that the person is evaluated for community-based  
2 services and, if appropriate, is provided transition services  
3 through Department of Aging and Disability Services programs to  
4 enable the person to leave the institution and receive  
5 community-based services.

6 (e) The executive commissioner shall adopt rules to  
7 implement this section.

8 SECTION 2.16. Section 48.208, Human Resources Code, is  
9 amended by amending Subsection (e) and adding Subsections (c-1),  
10 (c-2), (c-3), and (d-1) to read as follows:

11 (c-1) Notwithstanding Subsection (c)(4), the petition may  
12 include an assessment of the elderly or disabled person's health or  
13 psychological status as described by Subsection (c-2) or (c-3) in  
14 lieu of a medical report described by Subsection (c)(4) if the  
15 department determines after making a good faith effort that a  
16 physician from whom the department may obtain the medical report is  
17 unavailable. The department shall ensure that the person who  
18 performs an assessment of the elderly or disabled person's health  
19 or psychological status has training and experience in performing  
20 the applicable assessment.

21 (c-2) An assessment of the elderly or disabled person's  
22 health may be completed by a physician assistant or advanced  
23 practice nurse and must state:

24 (1) that the person is reported to be suffering from  
25 abuse, neglect, or exploitation, which may present a threat to life  
26 or physical safety;

27 (2) whether the person has provided the person's



1 medical history to the physician assistant or advanced practice  
2 nurse, as applicable; and

3 (3) the professional opinion of the physician  
4 assistant or advanced practice nurse, as applicable, that under the  
5 circumstances a temporary order of emergency services without the  
6 person's consent is necessary.

7 (c-3) An assessment of the elderly or disabled person's  
8 psychological status may be completed by a licensed psychologist or  
9 master social worker who has training and expertise in issues  
10 related to abuse, neglect, and exploitation, and must state:

11 (1) that the person is reported to be suffering from  
12 abuse, neglect, or exploitation, which may present a threat to life  
13 or physical safety; and

14 (2) the professional opinion of the psychologist or  
15 master social worker, as applicable, that under the circumstances a  
16 temporary order of emergency services without the person's consent  
17 is necessary.

18 (d-1) If the court enters an order described by Subsection  
19 (d) that is based on a petition that did not include a medical  
20 report described by Subsection (c)(4), the court shall order that  
21 the elderly or disabled person be examined by a physician not later  
22 than 72 hours after the provision of protective services begins.

23 (e) The emergency order expires at the end of 72 hours from  
24 the time of the order unless the 72-hour period ends on a Saturday,  
25 Sunday, or legal holiday in which event the order is automatically  
26 extended to 4 p.m. on the first succeeding business day. An order  
27 may be renewed for not more than 30 [~~14~~] additional days, except

1 that an order that was based on a petition that did not include a  
2 medical report described by Subsection (c)(4) may not be renewed  
3 unless a medical report described by Subsection (c)(4) is filed  
4 with the request for the renewal. A renewal order that ends on a  
5 Saturday, Sunday, or legal holiday is automatically extended to 4  
6 p.m. on the first succeeding business day. The court may modify or  
7 terminate the emergency order on petition of the department, the  
8 incapacitated person, or any person interested in his welfare.

9 SECTION 2.17. Chapter 48, Human Resources Code, is amended  
10 by adding Subchapter J to read as follows:

11 SUBCHAPTER J. OPTION FOR LOCAL PROVISION OF SERVICES

12 Sec. 48.451. DEFINITION. In this subchapter, "local  
13 entity" means a local public or private agency, corporation, board,  
14 or organization.

15 Sec. 48.452. PRELIMINARY INFORMATION PROVIDED BY  
16 DEPARTMENT. On the request of the commissioners court of a county  
17 or the commissioners courts of two or more counties that want to  
18 explore forming a cooperative for purposes of this subchapter, the  
19 department shall provide sufficient information to the  
20 commissioners court or commissioners courts, as applicable, to  
21 enable an assessment of whether one or more functions and duties of  
22 the department under this chapter could be performed by the county  
23 or counties directly, through contracts with local entities, or  
24 both, in a more efficient and effective manner than the manner in  
25 which the functions and duties are performed by the department.

26 Sec. 48.453. PROVISION OF SERVICES BY COUNTIES AUTHORIZED.

27 (a) A county or two or more counties that form a cooperative as

1 provided by Section 48.454 may, subject to the requirements of this  
2 subchapter, opt to perform one or more functions and duties of the  
3 department under this chapter if the county or counties, as  
4 applicable, determine that those functions and duties could be  
5 performed more efficiently and effectively in the manner described  
6 by Section 48.452.

7 (b) Functions and duties of the department that a county or  
8 counties may opt to perform include:

9 (1) conducting investigations of reports of abuse,  
10 neglect, or exploitation of an elderly or disabled person, other  
11 than an investigation under Subchapter F, G, or H; and

12 (2) providing protective services as necessary to a  
13 person who is the subject of an investigation.

14 (c) A county or cooperative that opts to conduct  
15 investigations described by Subsection (b)(1) and to provide  
16 protective services described by Subsection (b)(2) shall ensure  
17 that:

18 (1) if the county or cooperative directly conducts  
19 investigations, the county or cooperative does not also directly  
20 provide protective services; and

21 (2) if a local entity conducts investigations under a  
22 contract with the county or cooperative, that local entity does not  
23 also provide protective services.

24 Sec. 48.454. FORMATION OF COUNTY COOPERATIVE. Two or more  
25 counties may form a cooperative to perform functions and duties of  
26 the department as authorized by Section 48.453. To form a  
27 cooperative, the counties must:

1           (1) enter into an interlocal cooperation contract  
2 under Chapter 791, Government Code; and

3           (2) designate one of the counties that is a party to  
4 the interlocal cooperation contract as the entity that, on behalf  
5 of the cooperative, will contract with the department under this  
6 subchapter and monitor and enforce any contracts the cooperative  
7 enters into with local entities.

8           Sec. 48.455. LOCAL ADULT PROTECTIVE SERVICES PLAN.

9           (a) Before a county or cooperative may perform one or more  
10 functions and duties of the department as authorized by Section  
11 48.453, the county or cooperative must submit to the department for  
12 approval a local adult protective services plan under which the  
13 county or cooperative will assume and provide for the performance  
14 of those functions and duties.

15           (b) If a county or cooperative intends to perform all or  
16 part of those functions and duties through contracts with local  
17 entities, the county or cooperative, as applicable, shall solicit  
18 and accept proposals from local entities for performing those  
19 functions and duties.

20           (c) A local adult protective services plan required under  
21 this section must:

22           (1) specify which of the department's functions and  
23 duties the county or cooperative is proposing to perform directly  
24 or through contracts with local entities;

25           (2) include proposals submitted to the county or  
26 cooperative, as applicable, by local entities, if the county or  
27 cooperative intends to perform all or part of the specified

1 functions and duties through contracts with local entities; and

2 (3) demonstrate that the county or cooperative or the  
3 local entities through which the county or cooperative would  
4 perform the specified functions and duties will:

5 (A) on entering into a contract to perform the  
6 functions and duties, have sufficient resources, including  
7 personnel, and adequate technological support, training, and  
8 expertise to perform those functions and duties; and

9 (B) if appropriate, provide persons needing  
10 adult protective services with immediate access to community-based  
11 services that may prevent the need for the appointment of guardians  
12 for those persons.

13 (d) The department shall evaluate the local adult  
14 protective services plan submitted under Subsection (a) and, not  
15 later than the 60th day after the plan is submitted, approve or  
16 disapprove the plan in writing. If during the 60-day period the  
17 department determines that additional information is needed to  
18 adequately assess the plan, the department shall:

19 (1) notify the county or cooperative, as applicable,  
20 of that determination;

21 (2) request the necessary information with sufficient  
22 specificity as to allow the county or cooperative, as applicable,  
23 to respond with the information; and

24 (3) provide the county or cooperative, as applicable,  
25 a reasonable period in which to respond with the necessary  
26 information.

27 Sec. 48.456. DEPARTMENT CONTRACT WITH COUNTY OR

1 COOPERATIVE. (a) Not later than the 30th day after the date the  
2 department approves a local adult protective services plan under  
3 Section 48.455, the department shall enter into a contract with the  
4 county or cooperative, as applicable, under which the county or  
5 cooperative, either directly or through contracts with the local  
6 entities whose proposals were included in the plan, performs the  
7 department's functions and duties that are specified in the plan.

8 (b) The department may not pay less under the terms of a  
9 contract under this section for the performance of the functions  
10 and duties specified in the contract than the department would  
11 otherwise spend in directly performing those functions and duties  
12 in the county or counties included in the cooperative.

13 (c) A contract under Subsection (a) between the department  
14 and a county or cooperative must:

15 (1) provide for a 90-day transition period during  
16 which:

17 (A) the performance of functions and duties  
18 specified in the contract will transfer from the department to the  
19 county, cooperative, or local entity that will ultimately perform  
20 the functions and duties; and

21 (B) the department will cooperate with each  
22 county, cooperative, or local entity that will perform the  
23 specified functions and duties to provide technical assistance,  
24 adequate training, and expertise to the county, cooperative, or  
25 entity before the transfer occurs;

26 (2) require the county or cooperative to file a report  
27 with the department once each calendar quarter that includes

1 information required by rules adopted by the executive commissioner  
2 regarding the performance of the functions and duties; and

3 (3) include provisions:

4 (A) imposing fiscal accountability measures; and

5 (B) allowing the department to monitor the  
6 performance of the functions and duties by local entities with  
7 which the county or cooperative contracts under Section 48.457, if  
8 applicable.

9 (d) The department shall ensure that, under a contract  
10 entered into with a county or cooperative under this section, the  
11 department's functions and duties under this chapter are performed  
12 in accordance with all applicable laws. The department shall  
13 monitor and enforce the terms of the contract, including the fiscal  
14 accountability measures. The department shall include a provision  
15 in the contract that allows the department to terminate the  
16 contract and resume performing the functions and duties specified  
17 in the contract if, under the contract between the department and  
18 the county or cooperative or under a contract between the county or  
19 cooperative and a local entity, the functions and duties are not  
20 performed in accordance with all applicable laws or the terms of the  
21 applicable contract.

22 Sec. 48.457. COUNTY OR COOPERATIVE CONTRACTS WITH LOCAL  
23 ENTITIES. (a) A county or cooperative may contract with a local  
24 entity whose proposal was included in the county's or cooperative's  
25 local adult protective services plan to perform one or more of the  
26 department's functions and duties specified in the plan. The  
27 county or cooperative may contract with any other local entity to

1 perform one or more of those functions and duties with the  
2 department's written approval.

3 (b) A contract under this section must require the local  
4 entity to provide the county or cooperative with information as  
5 needed to enable the county or cooperative to comply with the  
6 reporting requirement specified by Section 48.456(c)(2). The  
7 contract must also specify that the department is authorized to  
8 monitor the local entity's performance of functions and duties  
9 specified in the contract and require the entity to cooperate with  
10 that monitoring.

11 Sec. 48.458. DEPARTMENT PROHIBITED FROM DIRECT PROVISION OF  
12 CERTAIN SERVICES. Except as provided by Section 48.456(d) and  
13 notwithstanding any other provision of this chapter, beginning on  
14 the 91st day after the date the department enters into a contract  
15 with a county or cooperative under Section 48.456:

16 (1) the department may not directly perform the  
17 functions and duties specified in the contract; and

18 (2) the county or cooperative and any local entities  
19 with which the county or cooperative contracts under Section 48.457  
20 have all powers and privileges granted to and duties imposed on the  
21 department under this chapter with respect to those functions and  
22 duties.

23 SECTION 2.18. (a) Subchapter B, Chapter 531, Government  
24 Code, is amended by adding Section 531.0551 to read as follows:

25 Sec. 531.0551. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR  
26 CERTAIN ELDERLY OR DISABLED PERSONS NEEDING MULTIAGENCY SERVICES.

27 (a) In this section, "disabled person," "elderly person," and



1 "protective services" have the meanings assigned by Section 48.002,  
2 Human Resources Code.

3 (b) The commission and each health and human services agency  
4 shall adopt a joint memorandum of understanding to implement a  
5 system of local-level interagency staffing groups to coordinate  
6 services for an elderly or disabled person who needs multiagency  
7 services in addition to receiving protective services from or on  
8 behalf of the Department of Family and Protective Services.

9 (c) The memorandum must:

10 (1) clarify the financial and statutory  
11 responsibilities of each agency with respect to elderly or disabled  
12 persons needing multiagency services in addition to protective  
13 services, including subcategories of funding for different  
14 services such as case management, arranging for psychiatric and  
15 health evaluation, home care, health care, and investigation  
16 services;

17 (2) include a functional definition of "elderly and  
18 disabled persons needing multiagency services in addition to  
19 protective services";

20 (3) define procedures for cost sharing among the  
21 commission and the health and human services agencies adopting the  
22 memorandum;

23 (4) define procedures aimed at eliminating  
24 duplication of services relating to assessment and diagnosis,  
25 treatment, social services, residential placement and care, and  
26 case management of elderly and disabled persons needing multiagency  
27 services in addition to protective services;

1           (5) define procedures for addressing disputes between  
2 the agencies that relate to the agencies' areas of service  
3 responsibilities;

4           (6) provide that each local-level interagency  
5 staffing group includes:

6                   (A) a local representative of each agency;

7                   (B) one or more representatives of local private  
8 sector agencies;

9                   (C) a representative of a local law enforcement  
10 agency;

11                   (D) a health care provider; and

12                   (E) one or more family members or caregivers of  
13 elderly or disabled persons needing multiagency services in  
14 addition to protective services;

15           (7) provide that the local representative of each  
16 agency has authority to contribute agency resources to solving  
17 problems identified by the local-level interagency staffing group;

18           (8) provide that if an elderly or disabled person's  
19 needs exceed the resources of an agency or an agency is not able to  
20 provide all the services an elderly or disabled person requires,  
21 the agency may, with the consent of the person's legal guardian, if  
22 applicable, submit a referral on behalf of the person or the  
23 person's case history to the local-level interagency staffing group  
24 for consideration;

25           (9) provide that a local-level interagency staffing  
26 group may be called together by a representative of any member  
27 agency;

1           (10) provide that an agency representative may be  
2 excused from attending a meeting if the staffing group determines  
3 that the age or needs of the person to be considered are clearly not  
4 within the agency's service responsibilities, provided that each  
5 agency representative is encouraged to attend all meetings to  
6 contribute to the collective ability of the staffing group to solve  
7 an elderly or disabled person's need for multiagency services in  
8 addition to protective services;

9           (11) provide that records that are used or developed  
10 by a local-level interagency staffing group or its members and that  
11 relate to a particular elderly or disabled person are confidential  
12 and may not be released to any other person or agency except as  
13 provided by this section or by other law; and

14           (12) subject to the requirements of the Health  
15 Insurance Portability and Accountability Act of 1996 (42 U.S.C.  
16 Section 1320d et seq.), provide a procedure that permits the  
17 agencies and local-level interagency staffing groups to share  
18 confidential information while preserving the confidential nature  
19 of the information.

20           (d) The agencies that participate in the formulation of the  
21 memorandum of understanding shall consult with and solicit input  
22 from advocacy and consumer groups.

23           (e) Each agency shall adopt the memorandum of understanding  
24 and all revisions to the memorandum. Not later than the last month  
25 of each state fiscal year, each agency shall review and update the  
26 memorandum. The agencies shall develop revisions as necessary to  
27 reflect major agency reorganizations or statutory changes

1 affecting the agencies.

2 (f) The agencies shall ensure that a state-level  
3 interagency staffing group provides to the executive commissioner  
4 of the Health and Human Services Commission, the commissioner of  
5 each agency, the governor, the lieutenant governor, the speaker of  
6 the house of representatives, and the presiding officers of each  
7 house and senate standing committee having jurisdiction over adult  
8 protective services a biennial report that includes:

9 (1) the number of elderly or disabled persons served  
10 through the local-level interagency staffing groups established  
11 under this section and the outcomes of the services provided;

12 (2) a description of any barriers identified to the  
13 state's ability to provide effective services to elderly or  
14 disabled persons needing multiagency services in addition to  
15 protective services; and

16 (3) any other information relevant to improving the  
17 delivery of services to elderly or disabled persons needing  
18 multiagency services in addition to protective services.

19 (b) Not later than March 1, 2006, the Department of Family  
20 and Protective Services, the Health and Human Services Commission,  
21 the Department of Aging and Disability Services, the Department of  
22 State Health Services, and the Department of Assistive and  
23 Rehabilitative Services shall adopt a joint memorandum of  
24 understanding as prescribed by Section 531.0551, Government Code,  
25 as added by this section.

26 SECTION 2.19. The heading of Section 531.055, Government  
27 Code, is amended to read as follows:

1           Sec. 531.055. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR  
2 CERTAIN PERSONS NEEDING MULTIAGENCY SERVICES.

3           SECTION 2.20. Subsections (a), (b), and (e), Section  
4 531.055, Government Code, are amended to read as follows:

5           (a) Each health and human services agency, the Texas Council  
6 on Offenders with Mental Impairments, the Texas Department of  
7 Criminal Justice, the Texas Department of Housing and Community  
8 Affairs, the Texas Education Agency, the Texas Workforce  
9 Commission, and the Texas Youth Commission shall adopt a joint  
10 memorandum of understanding to promote a system of local-level  
11 interagency staffing groups to coordinate services for persons  
12 needing multiagency services other than elderly or disabled persons  
13 served through the local-level interagency staffing groups  
14 established under Section 531.0551.

15           (b) The memorandum must:

16           (1) clarify the statutory responsibilities of each  
17 agency in relation to persons needing multiagency services other  
18 than elderly or disabled persons served under Section 531.0551,  
19 including subcategories for different services such as prevention,  
20 family preservation and strengthening, aging in place, emergency  
21 shelter, diagnosis and evaluation, residential care, after-care,  
22 information and referral, medical care, and investigation  
23 services;

24           (2) include a functional definition for purposes of  
25 this section of "persons needing multiagency services";

26           (3) outline membership, officers, and necessary  
27 standing committees of local-level interagency staffing groups;

1           (4) define procedures aimed at eliminating  
2 duplication of services relating to assessment and diagnosis,  
3 treatment, residential placement and care, and case management of  
4 persons needing multiagency services;

5           (5) define procedures for addressing disputes between  
6 the agencies that relate to the agencies' areas of service  
7 responsibilities;

8           (6) provide that each local-level interagency  
9 staffing group includes:

10                   (A) a local representative of each agency;

11                   (B) representatives of local private sector  
12 agencies; and

13                   (C) family members or caregivers of persons,  
14 other than elderly or disabled persons served under Section  
15 531.0551, who need ~~needing~~ multiagency services or other current  
16 or previous consumers of multiagency services acting as general  
17 consumer advocates;

18           (7) provide that the local representative of each  
19 agency has authority to contribute agency resources to solving  
20 problems identified by the local-level interagency staffing group;

21           (8) provide that if a person's needs exceed the  
22 resources of an agency, the agency may, with the consent of the  
23 person's legal guardian, if applicable, submit a referral on behalf  
24 of the person to the local-level interagency staffing group for  
25 consideration;

26           (9) provide that a local-level interagency staffing  
27 group may be called together by a representative of any member

1 agency;

2 (10) provide that an agency representative may be  
3 excused from attending a meeting if the staffing group determines  
4 that the age or needs of the person to be considered are clearly not  
5 within the agency's service responsibilities, provided that each  
6 agency representative is encouraged to attend all meetings to  
7 contribute to the collective ability of the staffing group to solve  
8 a person's need for multiagency services;

9 (11) define the relationship between state-level  
10 interagency staffing groups and local-level interagency staffing  
11 groups in a manner that defines, supports, and maintains local  
12 autonomy;

13 (12) provide that records that are used or developed  
14 by a local-level interagency staffing group or its members that  
15 relate to a particular person are confidential and may not be  
16 released to any other person or agency except as provided by this  
17 section or by other law; and

18 (13) provide a procedure that permits the agencies to  
19 share confidential information while preserving the confidential  
20 nature of the information.

21 (e) The agencies shall ensure that a state-level  
22 interagency staffing group provides a biennial report to the  
23 executive director of each agency, the legislature, and the  
24 governor that includes:

25 (1) the number of persons served through the  
26 local-level interagency staffing groups established under this  
27 section and the outcomes of the services provided;

1           (2) a description of any barriers identified to the  
2 state's ability to provide effective services to persons needing  
3 multiagency services other than elderly or disabled persons served  
4 through the local-level interagency staffing groups established  
5 under Section 531.0551; and

6           (3) any other information relevant to improving the  
7 delivery of services to persons needing multiagency services other  
8 than elderly or disabled persons described by Subdivision (2).

9           SECTION 2.21. IMPLEMENTATION MONITORING; REPORT. (a) In  
10 this section, "caseload" means the total number of open cases that  
11 an adult protective services caseworker is assigned, regardless of  
12 the number of cases with respect to which the caseworker performs  
13 functions on a specified day.

14           (b) The Legislative Budget Board shall:

15           (1) monitor the implementation of this article by the  
16 Department of Family and Protective Services; and

17           (2) not later than January 1, 2007, report to the  
18 legislature regarding:

19           (A) the status of the implementation of this  
20 article;

21           (B) whether department personnel are meeting  
22 expectations with respect to the client-centered outcome measures  
23 and minimum job performance standards established under Section  
24 40.0515, Human Resources Code, as added by this article;

25           (C) the average caseload of each adult protective  
26 services caseworker;

27           (D) the average amount of time spent



1 investigating an adult protective services case from the initial  
2 report made under Section 48.051, Human Resources Code, as amended  
3 by this article, to final disposition of the case, including the  
4 average amount of time a caseworker spends writing reports and  
5 completing other documentation in the case;

6 (E) the incidence of reports made under Section  
7 48.051, Human Resources Code, as amended by this article, that  
8 involve as their subject an elderly or disabled person with respect  
9 to whom a report was previously made under that section; and

10 (F) the average amount of time department  
11 personnel spend providing non-investigative services to a person  
12 who is the subject of a report made under Section 48.051, Human  
13 Resources Code, as amended by this article.

14 SECTION 2.22. LOCAL ADULT PROTECTIVE SERVICES BOARDS.

15 (a) The standing committee of the senate having jurisdiction over  
16 adult protective services shall conduct a study regarding the  
17 feasibility of establishing a system by which adult protective  
18 services are provided through a statewide network of local adult  
19 protective services boards. Each local adult protective services  
20 board would:

21 (1) serve a designated local adult protective services  
22 area;

23 (2) develop a local adult protective services plan for  
24 approval by the Department of Family and Protective Services; and

25 (3) receive a block grant through the department to  
26 provide adult protective services in accordance with the approved  
27 local adult protective services plan.

1 (b) The standing committee of the senate having  
2 jurisdiction over adult protective services must include the  
3 results of the study conducted under this section and  
4 recommendations regarding implementation of the local adult  
5 protective services board system in the committee's interim report  
6 to the 80th Legislature.

7 ARTICLE 3. GUARDIANSHIP AND RELATED SERVICES

8 SECTION 3.01. The heading to Subchapter E, Chapter 48,  
9 Human Resources Code, is amended to read as follows:

10 SUBCHAPTER E. PROVISION OF SERVICES; [~~GUARDIANSHIP SERVICES,~~]

11 EMERGENCY PROTECTION

12 SECTION 3.02. The heading to Section 48.209, Human  
13 Resources Code, is amended to read as follows:

14 Sec. 48.209. SUBMISSION OF INFORMATION TO PROBATE COURT  
15 [~~GUARDIANSHIPS~~].

16 SECTION 3.03. Subsections (a), (b), and (c), Section  
17 48.209, Human Resources Code, are amended to read as follows:

18 (a) At least six months before the individual's 18th  
19 birthday, the [The] department shall submit to the appropriate  
20 court having probate jurisdiction an information letter about [file  
21 an application under Section 682 or 875, Texas Probate Code, to be  
22 appointed guardian of the person or estate or both of] an individual  
23 who is a minor, is a conservatee of the department, and, because of  
24 a physical or mental condition, will be substantially unable to  
25 provide food, clothing, or shelter for himself or herself, to care  
26 for the individual's own physical health, or to manage the  
27 individual's own financial affairs when the individual becomes an

1 adult. The information letter must satisfy the requirements of  
2 Section 683A, Texas Probate Code. If a less restrictive  
3 alternative to guardianship is available for an individual, the  
4 department shall pursue the alternative before submitting the  
5 information letter. On exhausting the alternative and determining  
6 that no other less restrictive alternative to guardianship is  
7 available, the department shall inform the appropriate court that a  
8 guardianship may be necessary for the individual by submitting the  
9 letter under this section [~~instead of applying for appointment as a~~  
10 ~~guardian~~].

11 (b) The [~~As a last resort, the~~] department shall submit to  
12 the appropriate court having probate jurisdiction an information  
13 letter about [~~may apply to be appointed guardian of the person or~~  
14 ~~estate of~~] an elderly or disabled person who is found by the  
15 department to be in a state of abuse, neglect, or exploitation, and  
16 who, because of a physical or mental condition, will be  
17 substantially unable to provide food, clothing, or shelter for  
18 himself or herself, to care for the individual's own physical  
19 health, or to manage the individual's own financial affairs. The  
20 information letter must:

21 (1) satisfy the requirements of Section 683A, Texas  
22 Probate Code;

23 (2) include information relating to whether the  
24 department is providing protective services to the individual;

25 (3) state whether [~~A representative of the department~~  
26 ~~shall take the oath required by the Texas Probate Code on behalf of~~  
27 ~~the department if the department is appointed guardian. If~~] the

1 department is aware of any [~~knows that an~~] individual who is willing  
2 and able to serve as the guardian; and

3 (4) be submitted not later than the 14th day after the  
4 date the department finds the individual [~~, the department may~~  
5 ~~inform the court of that individual's willingness and ability~~].

6 (c) [~~If appropriate, the department may contract with a~~  
7 ~~political subdivision of this state, a private agency, or another~~  
8 ~~state agency for the provision of guardianship services under this~~  
9 ~~section.~~] The department [~~or a political subdivision of the state~~  
10 ~~or state agency with which the department contracts under this~~  
11 ~~section~~] is not required to [~~post a bond or~~] pay any cost or fee  
12 otherwise required by the Texas Probate Code, including a fee  
13 associated with the appointment of a guardian ad litem or attorney  
14 ad litem.

15 SECTION 3.04. Section 161.071, Human Resources Code, is  
16 amended to read as follows:

17 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The  
18 department is responsible for administering human services  
19 programs for the aging and disabled, including:

20 (1) administering and coordinating programs to  
21 provide community-based care and support services to promote  
22 independent living for populations that would otherwise be  
23 institutionalized;

24 (2) providing institutional care services, including  
25 services through convalescent and nursing homes and related  
26 institutions under Chapter 242, Health and Safety Code;

27 (3) providing and coordinating programs and services

1 for persons with disabilities, including programs for the  
2 treatment, rehabilitation, or benefit of persons with  
3 developmental disabilities or mental retardation;

4 (4) operating state facilities for the housing,  
5 treatment, rehabilitation, or benefit of persons with  
6 disabilities, including state schools for persons with mental  
7 retardation;

8 (5) serving as the state unit on aging required by the  
9 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)  
10 and its subsequent amendments, including performing the general  
11 functions under Section 101.022 to ensure:

12 (A) implementation of the federal Older  
13 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its  
14 subsequent amendments, including implementation of services and  
15 volunteer opportunities under that Act for older residents of this  
16 state through area agencies on aging;

17 (B) advocacy for residents of nursing facilities  
18 through the office of the state long-term care ombudsman;

19 (C) fostering of the state and community  
20 infrastructure and capacity to serve older residents of this state;  
21 and

22 (D) availability of a comprehensive resource for  
23 state government and the public on trends related to and services  
24 and programs for an aging population;

25 (6) performing all licensing and enforcement  
26 activities and functions related to long-term care facilities,  
27 including licensing and enforcement activities related to

1 convalescent and nursing homes and related institutions under  
2 Chapter 242, Health and Safety Code;

3 (7) performing all licensing and enforcement  
4 activities related to assisted living facilities under Chapter 247,  
5 Health and Safety Code;

6 (8) performing all licensing and enforcement  
7 activities related to intermediate care facilities for persons with  
8 mental retardation under Chapter 252, Health and Safety Code; ~~and~~

9 (9) performing all licensing and enforcement  
10 activities and functions related to home and community support  
11 services agencies under Chapter 142, Health and Safety Code; and

12 (10) serving as last resort as the guardian of the  
13 person or estate, or both, of an incapacitated person under Chapter  
14 XIII, Texas Probate Code.

15 SECTION 3.05. Subchapter D, Chapter 161, Human Resources  
16 Code, is amended by adding Section 161.074 to read as follows:

17 Sec. 161.074. GUARDIANSHIP SERVICES AS LAST RESORT. (a) A  
18 representative of the department shall take the oath required by  
19 the Texas Probate Code on behalf of the department if the department  
20 is appointed guardian of the person or estate, or both, of a ward  
21 under Chapter XIII of that code.

22 (b) The department is not required to post a bond or pay any  
23 cost or fee associated with a guardianship proceeding under the  
24 Texas Probate Code, including any fee associated with the  
25 appointment of a guardian ad litem or attorney ad litem.

26 (c) If the department is appointed guardian, the department  
27 is not liable for funding services provided to the department's

1 ward, including long-term care or burial expenses.

2 (d) The department shall review each of the department's  
3 pending guardianship cases at least annually to determine whether a  
4 more suitable person, including a guardianship program or private  
5 professional guardian, is willing and able to serve as successor  
6 guardian for a ward of the department. If the department becomes  
7 aware of any person's willingness and ability to serve as successor  
8 guardian, the department shall notify the court in which the  
9 guardianship is pending as required by Section 695A, Texas Probate  
10 Code.

11 (e) The number of wards of the department at any one time may  
12 not exceed 1,500.

13 SECTION 3.06. Section 601, Texas Probate Code, is amended  
14 by amending Subdivisions (13), (21), and (24) and adding  
15 Subdivision (12-a) to read as follows:

16 (12-a) "Guardianship Alliance Office" means the  
17 Guardianship Alliance Office established under Chapter 111,  
18 Government Code.

19 (13) "Guardianship program" has the meaning assigned  
20 by Section 111.001, Government Code [~~means a local, county, or~~  
21 ~~regional program that provides guardianship and related services to~~  
22 ~~an incapacitated person or other person who needs assistance in~~  
23 ~~making decisions concerning the person's own welfare or financial~~  
24 ~~affairs)].~~

25 (21) "Person" includes natural persons, corporations,  
26 governmental entities, private professional guardians, and  
27 guardianship programs.

1           (24) "Private professional guardian" has the meaning  
2 assigned by Section 111.001, Government Code [~~means a person, other~~  
3 ~~than an attorney or a corporate fiduciary, who is engaged in the~~  
4 ~~business of providing guardianship services~~].

5           SECTION 3.07. Section 625, Texas Probate Code, is amended  
6 to read as follows:

7           Sec. 625. CASE FILES. (a) The county clerk shall maintain  
8 a case file for each person's filed guardianship proceedings. The  
9 case file must contain all orders, judgments, and proceedings of  
10 the court and any other guardianship filing with the court,  
11 including all:

- 12           (1) applications for the granting of guardianship;
- 13           (2) citations and notices, whether published or  
14 posted, with the returns on the citations and notices;
- 15           (3) bonds and official oaths;
- 16           (4) inventories, appraisements, and lists of claims;
- 17           (5) exhibits and accounts;
- 18           (6) reports of hiring, renting, or sale;
- 19           (7) applications for sale or partition of real estate  
20 and reports of sale and of commissioners of partition;
- 21           (8) applications for authority to execute leases for  
22 mineral development, or for pooling or unitization of lands,  
23 royalty, or other interest in minerals, or to lend or invest money;
- 24           (9) reports of lending or investing money; and
- 25           (10) reports of guardians of the persons.

26           **(b) The county clerk may not post any information contained**  
27 **in a person's case file on the Internet.**



1 SECTION 3.08. The heading to Subpart J, Part 2, Chapter  
2 XIII, Texas Probate Code, is amended to read as follows:

3 SUBPART J. LIABILITY OF GUARDIAN [~~FOR CONDUCT OF WARD~~]

4 SECTION 3.09. The heading to Section 673, Texas Probate  
5 Code, is amended to read as follows:

6 Sec. 673. LIABILITY OF GUARDIAN FOR CONDUCT OF WARD.

7 SECTION 3.10. Subpart J, Part 2, Chapter XIII, Texas  
8 Probate Code, is amended by adding Section 674 to read as follows:

9 Sec. 674. IMMUNITY OF GUARDIANSHIP PROGRAM. A guardianship  
10 program is not liable for civil damages arising from an action taken  
11 or omission made by a person while providing guardianship services  
12 to a ward on behalf of the guardianship program, unless the action  
13 or omission:

14 (1) was wilfully wrongful;

15 (2) was taken or made with conscious indifference or  
16 reckless disregard to the safety of the incapacitated person or  
17 another;

18 (3) was taken or made in bad faith or with malice; or

19 (4) was grossly negligent.

20 SECTION 3.11. Section 677, Texas Probate Code, is amended  
21 by adding Subsection (f) to read as follows:

22 (f) If there is no eligible person willing and able to serve  
23 as guardian, the court shall determine whether it is in the adult  
24 individual's best interest to appoint as guardian a guardianship  
25 program, a private professional guardian, or, as last resort, the  
26 Department of Aging and Disability Services. Before appointing the  
27 department as guardian, the court must enter a specific finding

1 that the department is the most suitable person to serve as guardian  
2 for the proposed ward and that the appointment is in the best  
3 interest of the proposed ward.

4 SECTION 3.12. Section 682, Texas Probate Code, is amended  
5 to read as follows:

6 Sec. 682. APPLICATION; CONTENTS. Any person may commence a  
7 proceeding for the appointment of a guardian by filing a written  
8 application in a court having jurisdiction and venue. The  
9 application must be sworn to by the applicant and state:

10 (1) the name, sex, date of birth, and address of the  
11 proposed ward;

12 (2) the name, relationship, and address of the person  
13 the applicant desires to have appointed as guardian;

14 (3) whether guardianship of the person or estate, or  
15 both, is sought;

16 (4) the nature and degree of the alleged incapacity,  
17 the specific areas of protection and assistance requested, and the  
18 limitation of rights requested to be included in the court's order  
19 of appointment;

20 (5) the facts requiring that a guardian be appointed  
21 and the interest of the applicant in the appointment;

22 (6) the nature and description of any guardianship of  
23 any kind existing for the proposed ward in any other state;

24 (7) the name and address of any person or institution  
25 having the care and custody of the proposed ward;

26 (8) the approximate value and description of the  
27 proposed ward's property, including any compensation, pension,

1 insurance, or allowance to which the proposed ward may be entitled;

2 (9) the name and address of any person whom the  
3 applicant knows to hold a power of attorney signed by the proposed  
4 ward and a description of the type of power of attorney;

5 (10) if the proposed ward is a minor and if known by  
6 the applicant:

7 (A) the name of each parent of the proposed ward  
8 and state the parent's address or that the parent is deceased;

9 (B) the name and age of each sibling, if any, of  
10 the proposed ward and state the sibling's address or that the  
11 sibling is deceased; and

12 (C) if each of the proposed ward's parents and  
13 siblings are deceased, the names and addresses of the proposed  
14 ward's next of kin who are adults;

15 (11) if the proposed ward is a minor, whether the minor  
16 was the subject of a legal or conservatorship proceeding within the  
17 preceding two-year period and, if so, the court involved, the  
18 nature of the proceeding, and the final disposition, if any, of the  
19 proceeding;

20 (12) if the proposed ward is an adult and if known by  
21 the applicant:

22 (A) the name of the proposed ward's spouse, if  
23 any, and state the spouse's address or that the spouse is deceased;

24 (B) the name of each of the proposed ward's  
25 parents and state the parent's address or that the parent is  
26 deceased;

27 (C) the name and age of each of the proposed

1 ward's siblings, if any, and state the sibling's address or that the  
2 sibling is deceased;

3 (D) the name and age of each of the proposed  
4 ward's children, if any, and state the child's address or that the  
5 child is deceased; and

6 (E) if the proposed ward's spouse and each of the  
7 proposed ward's parents, siblings, and children are deceased, or,  
8 if there is no spouse, parent, adult sibling, or adult child, the  
9 names and addresses of the proposed ward's next of kin who are  
10 adults;

11 (13) facts showing that the court has venue over the  
12 proceeding; and

13 (14) if applicable, that the person whom the applicant  
14 desires to have appointed as a guardian is a private professional  
15 guardian who is certified under Subchapter D, Chapter 111,  
16 Government Code, and has complied with the requirements of Section  
17 697 of this code.

18 SECTION 3.13. Section 683, Texas Probate Code, is amended  
19 by amending Subsection (a) and adding Subsection (a-1) to read as  
20 follows:

21 (a) If a court has probable cause to believe that a person  
22 domiciled or found in the county in which the court is located is an  
23 incapacitated person, including the receipt of an information  
24 letter about a person submitted under Section 48.209, Human  
25 Resources Code, and the person does not have a guardian in this  
26 state, the court, except as provided by Subsection (a-1) of this  
27 section, shall appoint a guardian ad litem or court investigator to

1 investigate and file an application for the appointment of a  
2 guardian of the person or estate, or both, of the person believed to  
3 be incapacitated.

4 (a-1) The court in a county that does not have a statutory  
5 probate court, in lieu of appointing a guardian ad litem under  
6 Subsection (a) of this section, may appoint the Department of  
7 Family and Protective Services, subject to the availability of  
8 funds, to investigate and file a report with the court as to whether  
9 a guardian may be necessary or whether a less restrictive  
10 alternative to guardianship might meet the needs of the proposed  
11 ward. If the court, after considering the report filed under this  
12 subsection, determines that a guardianship may be necessary, the  
13 court shall appoint a guardian ad litem, the county attorney, the  
14 district attorney, or a guardianship program to file an application  
15 for the appointment of a suitable person to serve as guardian for  
16 the proposed ward.

17 SECTION 3.14. Section 684, Texas Probate Code, is amended  
18 by amending Subsection (b) and adding Subsection (b-1) to read as  
19 follows:

20 (b) Before appointing a guardian and except as provided by  
21 Subsection (b-1) of this section, the court must find by a  
22 preponderance of the evidence that:

23 (1) the court has venue of the case;

24 (2) the person to be appointed guardian is eligible to  
25 act as guardian and is entitled to appointment, or, if no eligible  
26 person entitled to appointment applies, the person appointed is:

27 (A) a proper person to act as guardian; and

1                   (B) the most suitable person to serve as guardian  
2 for the proposed ward;

3                   (3) if a guardian is appointed for a minor, the  
4 guardianship is not created for the primary purpose of enabling the  
5 minor to establish residency for enrollment in a school or school  
6 district for which the minor is not otherwise eligible for  
7 enrollment; and

8                   (4) the proposed ward is totally without capacity as  
9 provided by this code to care for himself or herself and to manage  
10 the individual's property, or the proposed ward lacks the capacity  
11 to do some, but not all, of the tasks necessary to care for himself  
12 or herself or to manage the individual's property.

13                   (b-1) Before appointing the Department of Aging and  
14 Disability Services as guardian, the court, in addition to making  
15 the findings required by Subsection (a) of this section, must:

16                   (1) make the findings required by Subsections (b)(1),  
17 (b)(3), and (b)(4) of this section; and

18                   (2) find by clear and convincing evidence that the  
19 department is the person most suitable to serve as guardian of the  
20 proposed ward and that the appointment is in the proposed ward's  
21 best interest.

22                   SECTION 3.15. Subpart A, Part 3, Chapter XIII, Texas  
23 Probate Code, is amended by adding Sections 691 and 691A to read as  
24 follows:

25                   Sec. 691. STATE AS GUARDIAN OF LAST RESORT. (a) Except as  
26 a last resort, the court may not appoint the Department of Aging and  
27 Disability Services to serve as guardian of the person or estate, or

1 both, of an incapacitated person.

2 (b) This section may not be construed to permit the  
3 appointment of a state entity other than the Department of Aging and  
4 Disability Services as a guardian under this chapter.

5 Sec. 691A. AGREEMENTS FOR APPOINTMENT AS PUBLIC GUARDIANS.

6 (a) A county may enter into an agreement with a person operating a  
7 guardianship program located in the county or in an adjacent county  
8 or with a private professional guardian located in the county or in  
9 an adjacent county regarding the willingness and ability of the  
10 parties to provide guardianship and related services to  
11 incapacitated persons who:

12 (1) may need guardianship services or similar  
13 assistance; and

14 (2) do not have a family member, friend, or other  
15 interested person who is willing, able, and qualified to serve as  
16 guardian of the person or estate, or both.

17 (b) Consideration for an agreement under Subsection (a) of  
18 this section may be monetary or in-kind, such as office space,  
19 transportation, or utilities.

20 (c) On execution of the agreement, the county shall provide  
21 a copy of the agreement to the Guardianship Alliance Office and to  
22 each of the courts having probate jurisdiction over a county  
23 participating in the agreement.

24 (d) A county that enters into an agreement under Subsection  
25 (a) of this section may determine that the county or each other  
26 party to the agreement may not be the person most suitable to serve  
27 as guardian for an incapacitated person residing in the county,

1 and, if the court appoints the Department of Aging and Disability  
2 Services as guardian of last resort for the incapacitated person,  
3 the county shall reimburse the department for a portion of the costs  
4 incurred in providing guardianship services to the incapacitated  
5 person if the person's estate is insufficient to pay for the  
6 services.

7 (e) A person, including the court, may infer that a county,  
8 by failing to enter into or submit a copy of an agreement to the  
9 court under this section, has made a determination that the state  
10 may be more suitable than the county to provide guardianship and  
11 related services to residents of the county described by Subsection  
12 (a) of this section. If, as a last resort, the Department of Aging  
13 and Disability Services is appointed guardian of an incapacitated  
14 person residing in the county, the county shall reimburse the  
15 department for a portion of the costs incurred in providing  
16 guardianship services to the incapacitated person if the person's  
17 estate is insufficient to pay for the services.

18 (f) The amount to be reimbursed to the Department of Aging  
19 and Disability Services under Subsection (d) or (e) of this section  
20 must be a reasonable amount as determined jointly by the department  
21 and the Guardianship Alliance Office, and must be approved by the  
22 judge of the court having jurisdiction over the guardianship  
23 proceedings. Reimbursements paid to the Department of Aging and  
24 Disability Services by a county shall be paid from funds budgeted by  
25 the commissioners court of the county for that purpose.

26 (g) The Department of Aging and Disability Services shall  
27 deposit all amounts received from a county under Subsection (d) or



1 (e) of this section to the credit of the guardianship services  
2 account in the general revenue fund. Money in the account may be  
3 appropriated only to the department for the provision of  
4 guardianship services, as a last resort, to wards of the  
5 department.

6 (h) A county or guardianship program that enters into an  
7 agreement under this section remains eligible to receive  
8 supplemental funds from the Guardianship Alliance Office under  
9 Section 111.048, Government Code, to provide guardianship and  
10 related services to incapacitated persons.

11 SECTION 3.16. Section 693, Texas Probate Code, is amended  
12 by adding Subsection (f) to read as follows:

13 (f) An order appointing the Department of Aging and  
14 Disability Services as guardian must specify that the department is  
15 the most suitable person to serve as guardian for the proposed ward  
16 and that the appointment is in the best interest of the proposed  
17 ward.

18 SECTION 3.17. Section 695A, Texas Probate Code, is amended  
19 by adding Subsections (a-1) and (d) to read as follows:

20 (a-1) If, while serving as a guardian for a ward under this  
21 chapter, the Department of Aging and Disability Services becomes  
22 aware of a guardianship program or private professional guardian  
23 willing and able to serve as the ward's successor guardian and the  
24 department is not aware of a family member or friend of the ward or  
25 any other interested person who is willing and able to serve as the  
26 ward's successor guardian, the department shall notify the court in  
27 which the guardianship is pending of the guardianship program's or

1 private professional guardian's willingness and ability to serve.

2 (d) If the court finds under Subsection (a-1) of this  
3 section that the proposed successor guardian for a ward is eligible  
4 to be appointed as the ward's successor guardian and that the  
5 appointment is in the ward's best interest, the Department of Aging  
6 and Disability Services, or the court on the court's own motion, may  
7 file an application to appoint the guardianship program or private  
8 professional guardian as the ward's successor guardian. Service of  
9 notice on an application filed under this subsection shall be made  
10 as directed by the court.

11 SECTION 3.18. Section 696, Texas Probate Code, is amended  
12 to read as follows:

13 Sec. 696. APPOINTMENT OF PRIVATE PROFESSIONAL GUARDIANS. A  
14 court may not appoint a private professional guardian to serve as a  
15 guardian or permit a private professional guardian to continue to  
16 serve as a guardian under this code if the private professional  
17 guardian:

18 (1) has not complied with the requirements of Section  
19 697 of this code; or

20 (2) is not certified as provided by Section 697B of  
21 this code.

22 SECTION 3.19. Subpart A, Part 3, Texas Probate Code, is  
23 amended by adding Sections 696A and 696B to read as follows:

24 Sec. 696A. APPOINTMENT OF PUBLIC GUARDIANS. (a) An  
25 individual employed by or contracting with a guardianship program  
26 must be certified as provided by Section 697B of this code to  
27 provide guardianship services to a ward of the guardianship

1 program.

2 (b) An employee of the Department of Aging and Disability  
3 Services must be certified as provided by Section 697B of this code  
4 to provide guardianship services to a ward of the department.

5 Sec. 696B. APPOINTMENT OF FAMILY MEMBERS OR FRIENDS. A  
6 family member or friend of an incapacitated person is not required  
7 to be certified under Subchapter D, Chapter 111, Government Code,  
8 or any other law to serve as the person's guardian.

9 SECTION 3.20. Subsections (a), (c), and (e), Section 697,  
10 Texas Probate Code, are amended to read as follows:

11 (a) A private professional guardian must apply annually to  
12 the clerk of the county having venue over the proceeding for the  
13 appointment of a guardian for a certificate of registration  
14 [~~certification~~]. The application must include a sworn statement  
15 containing the following information concerning a private  
16 professional guardian or each person who represents or plans to  
17 represent the interests of a ward as a guardian on behalf of the  
18 private professional guardian:

19 (1) educational background and professional  
20 experience;

21 (2) three or more professional references;

22 (3) the names of all of the wards the private  
23 professional guardian or person is or will be serving as a guardian;

24 (4) the aggregate fair market value of the property of  
25 all wards that is being or will be managed by the private  
26 professional guardian or person;

27 (5) place of residence, business address, and business

1 telephone number; and

2 (6) whether the private professional guardian or  
3 person has ever been removed as a guardian by the court or resigned  
4 as a guardian in a particular case, and, if so, a description of the  
5 circumstances causing the removal or resignation, and the style of  
6 the suit, the docket number, and the court having jurisdiction over  
7 the proceeding.

8 (c) The term of the registration [~~certification~~] begins on  
9 the date that the requirements are met and extends through December  
10 31 of the initial year. After the initial year of registration  
11 [~~certification~~], the term of the registration [~~certification~~]  
12 begins on January 1 and ends on December 31 of each year. A renewal  
13 application must be completed during December of the year preceding  
14 the year for which the renewal is requested.

15 (e) Not later than February 1 of each year, the clerk shall  
16 submit to the Guardianship Alliance Office [~~Health and Human~~  
17 ~~Services Commission~~] the names and business addresses of private  
18 professional guardians who have satisfied the registration  
19 [~~certification~~] requirements under this section during the  
20 preceding year.

21 SECTION 3.21. Subpart A, Part 3, Texas Probate Code, is  
22 amended by adding Sections 697A and 697B to read as follows:

23 Sec. 697A. LIST OF PUBLIC GUARDIANS MAINTAINED BY COUNTY  
24 CLERKS. (a) Each guardianship program operating in a county shall  
25 submit annually to the county clerk a statement containing the  
26 name, address, and telephone number of each individual employed by  
27 or volunteering or contracting with the program to provide

1 guardianship services to a ward or proposed ward of the program.

2 (b) The Department of Aging and Disability Services, if the  
3 department is appointed to serve as guardian of last resort for one  
4 or more incapacitated persons residing in the county, shall submit  
5 annually to the county clerk the information required under  
6 Subsection (a) of this section for each department employee who is  
7 or will be providing guardianship services in the county on the  
8 department's behalf.

9 (c) Not later than February 1 of each year, the county clerk  
10 shall submit to the Guardianship Alliance Office the information  
11 received under Subsection (a) of this section during the preceding  
12 year.

13 Sec. 697B. CERTIFICATION REQUIREMENT FOR PRIVATE  
14 PROFESSIONAL GUARDIANS AND PUBLIC GUARDIANS. (a) The following  
15 persons must be certified under Subchapter D, Chapter 111,  
16 Government Code:

17 (1) an individual who is a private professional  
18 guardian;

19 (2) an individual who will represent the interests of  
20 a ward as a guardian on behalf of a private professional guardian;

21 (3) an individual providing guardianship services to a  
22 ward of a guardianship program on the program's behalf, except as  
23 provided by Subsection (d) of this section; and

24 (4) an employee of the Department of Aging and  
25 Disability Services providing guardianship services to a ward of  
26 the department.

27 (b) A person whose certification has expired must obtain a

1 new certification under Subchapter D, Chapter 111, Government Code,  
2 to be allowed to provide or continue to provide guardianship  
3 services to a ward under this code.

4 (c) The court shall notify the Guardianship Alliance Office  
5 if the court becomes aware of a person who is not complying with the  
6 terms of a certification issued under Subchapter D, Chapter 111,  
7 Government Code, or with the standards and rules adopted under that  
8 subchapter.

9 (d) An individual volunteering with a guardianship program  
10 is not required to be certified as provided by this section to  
11 provide guardianship services on the program's behalf.

12 SECTION 3.22. Subsections (a) and (c), Section 698, Texas  
13 Probate Code, are amended to read as follows:

14 (a) The clerk of the county having venue over the proceeding  
15 for the appointment of a guardian shall obtain criminal history  
16 record information that is maintained by the Department of Public  
17 Safety or the Federal Bureau of Investigation identification  
18 division relating to:

19 (1) a private professional guardian;

20 (2) each person who represents or plans to represent  
21 the interests of a ward as a guardian on behalf of the private  
22 professional guardian; ~~or~~

23 (3) each person employed by a private professional  
24 guardian who will:

25 (A) have personal contact with a ward or proposed  
26 ward;

27 (B) exercise control over and manage a ward's

1 estate; or

2 (C) perform any duties with respect to the  
3 management of a ward's estate;

4 (4) each person employed by or volunteering or  
5 contracting with a guardianship program to provide guardianship  
6 services to a ward of the program on the program's behalf; or

7 (5) an employee of the Department of Aging and  
8 Disability Services who is or will be providing guardianship  
9 services to a ward of the department.

10 (c) The court shall use the information obtained under this  
11 section only in determining whether to appoint, remove, or continue  
12 the appointment of a private professional guardian, a guardianship  
13 program, or the Department of Aging and Disability Services.

14 SECTION 3.23. Subsection (b), Section 700, Texas Probate  
15 Code, is amended to read as follows:

16 (b) A representative of the Department of Aging and  
17 Disability [~~Protective and Regulatory~~] Services shall take the oath  
18 required by Subsection (a) of this section if the department is  
19 appointed guardian.

20 SECTION 3.24. Subsection (a), Section 767, Texas Probate  
21 Code, is amended to read as follows:

22 (a) The guardian of the person is entitled to take [~~the~~]  
23 charge [~~and control~~] of the person of the ward, and the duties of  
24 the guardian correspond with the rights of the guardian. A guardian  
25 of the person has:

26 (1) the right to have physical possession of the ward  
27 and to establish the ward's legal domicile;

1           (2) the duty to provide [~~of~~] care, supervision  
2 [~~control~~], and protection for [~~of~~] the ward;

3           (3) the duty to provide the ward with clothing, food,  
4 medical care, and shelter;

5           (4) the power to consent to medical, psychiatric, and  
6 surgical treatment other than the in-patient psychiatric  
7 commitment of the ward; and

8           (5) on application to and order of the court, the power  
9 to establish a trust in accordance with 42 U.S.C. Section  
10 1396p(d)(4)(B), as amended, and direct that the income of the ward  
11 as defined by that section be paid directly to the trust, solely for  
12 the purpose of the ward's eligibility for medical assistance under  
13 Chapter 32, Human Resources Code.

14           SECTION 3.25. Subsections (c) and (j), Section 875, Texas  
15 Probate Code, are amended to read as follows:

16           (c) A sworn, written application for the appointment of a  
17 temporary guardian shall be filed before the court appoints a  
18 temporary guardian. The application must state:

19           (1) the name and address of the person who is the  
20 subject of the guardianship proceeding;

21           (2) the danger to the person or property alleged to be  
22 imminent;

23           (3) the type of appointment and the particular  
24 protection and assistance being requested;

25           (4) the facts and reasons supporting the allegations  
26 and requests;

27           (5) the name, address, and qualification of the



1 proposed temporary guardian;

2 (6) the name, address, and interest of the applicant;  
3 and

4 (7) if applicable, that the proposed temporary  
5 guardian is a private professional guardian who is certified under  
6 Subchapter D, Chapter 111, Government Code, and has complied with  
7 the requirements of Section 697 of this code.

8 (j) The court may not customarily or ordinarily appoint the  
9 Department of Aging and Disability [~~Protective and Regulatory~~]  
10 Services as a temporary guardian under this section. The  
11 appointment of the department as a temporary guardian under this  
12 section should be made only as a last resort.

13 SECTION 3.26. Title 2, Government Code, is amended by  
14 adding Subtitle J to read as follows:

15 SUBTITLE J. GUARDIANSHIPS

16 CHAPTER 111. GUARDIANSHIP ALLIANCE OFFICE

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 111.001. DEFINITIONS. In this chapter:

19 (1) "Administrative director" means the  
20 administrative director of the courts as appointed by Chapter 72.

21 (2) "Board" means the Guardianship Alliance Board.

22 (3) "Corporate fiduciary" has the meaning assigned by  
23 Section 601, Texas Probate Code.

24 (4) "Guardian" has the meaning assigned by Section  
25 601, Texas Probate Code.

26 (5) "Guardianship program" means a local, county, or  
27 regional program that provides guardianship and related services to

1 an incapacitated person or other person who needs assistance in  
2 making decisions concerning the person's own welfare or financial  
3 affairs.

4 (6) "Incapacitated person" has the meaning assigned by  
5 Section 601, Texas Probate Code.

6 (7) "Office" means the Guardianship Alliance Office.

7 (8) "Office of Court Administration" means the Office  
8 of Court Administration of the Texas Judicial System.

9 (9) "Private professional guardian" means a person,  
10 other than an attorney or a corporate fiduciary, who is engaged in  
11 the business of providing guardianship services.

12 (10) "Statutory probate court" has the meaning  
13 assigned by Section 601, Texas Probate Code.

14 (11) "Ward" has the meaning assigned by Section 601,  
15 Texas Probate Code.

16 Sec. 111.002. RULES. The supreme court may adopt rules  
17 consistent with this chapter, including rules governing the  
18 certification of individuals providing guardianship services.

19 Sec. 111.003. SUNSET PROVISION. The office is subject to  
20 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
21 in existence as provided by that chapter, the office is abolished  
22 and this chapter expires September 1, 2015.

23 [Sections 111.004-111.010 reserved for expansion]

24 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

25 Sec. 111.011. GUARDIANSHIP ALLIANCE OFFICE; ADMINISTRATIVE  
26 ATTACHMENT. (a) The Guardianship Alliance Office is  
27 administratively attached to the Office of Court Administration.

1           (b) Notwithstanding any other law, the Office of Court  
2 Administration shall:

3                   (1) provide administrative assistance, services, and  
4 materials to the office;

5                   (2) accept, deposit, and disburse money made available  
6 to the office;

7                   (3) accept gifts and grants on behalf of the office  
8 from any public or private entity;

9                   (4) pay the salaries and benefits of the director and  
10 staff of the office;

11                   (5) reimburse the travel expenses and other actual and  
12 necessary expenses of the board, director, and staff of the office  
13 incurred in the performance of a function of the office, as provided  
14 by the General Appropriations Act;

15                   (6) apply for and receive on behalf of the office any  
16 appropriations or other money from the state or federal government  
17 or any other public or private entity, subject to limitations and  
18 conditions prescribed by legislative appropriation; and

19                   (7) provide the office with adequate computer  
20 equipment and support.

21           Sec. 111.012. BOARD. (a) The Guardianship Alliance Board  
22 is composed of:

23                   (1) 11 members appointed by the presiding judge of the  
24 statutory probate courts, elected as provided by Chapter 25;

25                   (2) three public members appointed by the supreme  
26 court from a list of nominees submitted by the governor; and

27                   (3) a representative of the Department of Aging and

1 Disability Services appointed by the supreme court from a list of  
2 nominees submitted by the commissioner of aging and disability  
3 services.

4 (b) The presiding judge of the statutory probate courts  
5 shall appoint members under Subsection (a)(1) from the different  
6 geographical areas of this state.

7 (c) In making an appointment under Subsection (a)(2), the  
8 supreme court may reject one or more of the nominees on a list  
9 submitted by the governor and request a new list of different  
10 nominees. In making an appointment under Subsection (a)(3), the  
11 supreme court may reject one or more of the nominees on a list  
12 submitted by the commissioner of aging and disability services and  
13 request a new list of different nominees.

14 (d) To be eligible for appointment to the board other than  
15 as a public member, an individual must have demonstrated experience  
16 working with:

17 (1) a guardianship program;

18 (2) an organization that advocates on behalf of or in  
19 the interest of elderly individuals;

20 (3) an organization that advocates on behalf of or in  
21 the interest of individuals with mental illness or mental  
22 retardation or individuals with physical disabilities; or

23 (4) incapacitated individuals.

24 (e) Appointments to the board shall be made without regard  
25 to the race, color, disability, sex, religion, age, or national  
26 origin of the appointees.

27 (f) The members of the board serve for staggered six-year

1 terms, with the terms of one-third of the members expiring on  
2 February 1 of each odd-numbered year. Board members receive no  
3 compensation but are entitled to reimbursement of actual and  
4 necessary expenses incurred in the performance of their duties.

5 (g) The board shall elect from among its members a presiding  
6 officer and other officers considered necessary.

7 (h) The board shall meet at least quarterly at the call of  
8 the presiding officer.

9 (i) Any action taken by the board must be approved by a  
10 majority vote of the members present.

11 Sec. 111.013. ELIGIBILITY OF PUBLIC MEMBERS. A person is  
12 not eligible for appointment as a public member of the board if the  
13 person or the person's spouse:

14 (1) is registered, certified, or licensed by a  
15 regulatory agency in the field of guardianship;

16 (2) is employed by or participates in the management  
17 of a business entity or other organization regulated by the office  
18 or receiving money from the Office of Court Administration;

19 (3) owns or controls, directly or indirectly, more  
20 than a 10 percent interest in a business entity or other  
21 organization regulated by the office or receiving money from the  
22 Office of Court Administration; or

23 (4) uses or receives a substantial amount of tangible  
24 goods, services, or funds from the Office of Court Administration,  
25 other than compensation or reimbursement authorized by law for  
26 board membership, attendance, or expenses.

27 Sec. 111.014. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

1 (a) In this section, "Texas trade association" means a cooperative  
2 and voluntarily joined statewide association of business or  
3 professional competitors in this state designed to assist its  
4 members and its industry or profession in dealing with mutual  
5 business or professional problems and in promoting their common  
6 interest.

7 (b) A person may not be a member of the board or may not be an  
8 employee of the office employed in a "bona fide executive,  
9 administrative, or professional capacity," as that phrase is used  
10 for purposes of establishing an exemption to the overtime  
11 provisions of the federal Fair Labor Standards Act of 1938 (29  
12 U.S.C. Section 201 et seq.), if:

13 (1) the person is an officer, employee, or paid  
14 consultant of a Texas trade association in the field of  
15 guardianship; or

16 (2) the person's spouse is an officer, manager, or paid  
17 consultant of a Texas trade association in the field of  
18 guardianship.

19 (c) A person may not be a member of the board if the person  
20 is required to register as a lobbyist under Chapter 305 because of  
21 the person's activities for compensation on behalf of a profession  
22 related to the operation of the office.

23 Sec. 111.015. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a  
24 ground for removal from the board that a member:

25 (1) does not have at the time of appointment the  
26 qualifications required by Section 111.012;

27 (2) does not maintain during service on the board the

1 qualifications required by Section 111.012;

2 (3) is ineligible for membership under Section 111.013  
3 or 111.014;

4 (4) cannot, because of illness or disability,  
5 discharge the member's duties for a substantial part of the member's  
6 term; or

7 (5) is absent from more than half of the regularly  
8 scheduled board meetings that the member is eligible to attend  
9 during a calendar year without an excuse approved by a majority vote  
10 of the board.

11 (b) The validity of an action of the board is not affected by  
12 the fact that it is taken when a ground for removal of a board member  
13 exists.

14 (c) If the director of the office has knowledge that a  
15 potential ground for removal exists, the director shall notify the  
16 presiding officer of the board of the potential ground. The  
17 presiding officer shall then notify the presiding judge of the  
18 statutory probate courts and the chief justice of the supreme court  
19 that a potential ground for removal exists. If the potential ground  
20 for removal involves the presiding officer, the director shall  
21 notify the next highest ranking officer of the board, who shall then  
22 notify the presiding judge of the statutory probate courts and the  
23 chief justice of the supreme court that a potential ground for  
24 removal exists.

25 Sec. 111.016. POWERS AND DUTIES OF BOARD. (a) The board is  
26 charged with the executive functions necessary to carry out the  
27 purposes of this chapter under rules adopted by the supreme court.

1           (b) The board shall:

2                   (1) administer and enforce this chapter;

3                   (2) develop and recommend proposed rules and  
4 procedures to the supreme court as necessary to implement this  
5 chapter;

6                   (3) set the amount of each fee prescribed by Section  
7 111.062, subject to the approval of the supreme court;

8                   (4) establish the qualifications for obtaining  
9 certification or recertification under Section 111.062;

10                   (5) issue certificates to individuals who meet the  
11 certification requirements of Section 111.062; and

12                   (6) perform any other duty required by this chapter or  
13 other law.

14           (c) The board may appoint any necessary or proper  
15 subcommittee.

16           (d) The board shall maintain:

17                   (1) a complete record of each board proceeding; and

18                   (2) a complete record of each certification issued,  
19 renewed, suspended, or revoked under Section 111.062.

20           Sec. 111.017. TRAINING. (a) A person who is appointed to  
21 and qualifies for office as a member of the board may not vote,  
22 deliberate, or be counted as a member in attendance at a meeting of  
23 the board until the person completes a training program that  
24 complies with this section.

25           (b) The training program must provide the person with  
26 information regarding:

27                   (1) this chapter;



- 1           (2) the role and functions of the board;
- 2           (3) the current budget for the office;
- 3           (4) the results of the most recent formal audit of the  
4 office; and
- 5           (5) any applicable ethics policies adopted by the  
6 board.

7           (c) A person appointed to the board is entitled to  
8 reimbursement, as provided by the General Appropriations Act, for  
9 the travel expenses incurred in attending the training program  
10 regardless of whether the attendance at the program occurs before  
11 or after the person qualifies for office.

12           Sec. 111.018. USE OF TECHNOLOGY. The Office of Court  
13 Administration shall research and propose appropriate  
14 technological solutions to improve the board's and office's ability  
15 to perform its functions. The technological solutions must:

16           (1) ensure that the public is able to easily find  
17 information about the board and office on the Internet;

18           (2) ensure that persons who want to use the office's  
19 services are able to:

20                   (A) interact with the board and office through  
21 the Internet; and

22                   (B) access any service that can be provided  
23 effectively through the Internet; and

24           (3) be cost-effective and developed through the  
25 board's and office's planning processes.

26           Sec. 111.019. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

27           (a) The board shall develop and implement a policy to encourage

1 the use of appropriate alternative dispute resolution procedures to  
2 assist in the resolution of internal and external disputes under  
3 the office's jurisdiction.

4 (b) The procedures relating to alternative dispute  
5 resolution under this section must conform, to the extent possible,  
6 to any model guidelines issued by the State Office of  
7 Administrative Hearings for the use of alternative dispute  
8 resolution by state agencies.

9 Sec. 111.020. PUBLIC ACCESS. The board shall develop and  
10 implement policies that provide the public with a reasonable  
11 opportunity to appear before the board and to speak on any issue  
12 under the jurisdiction of the office.

13 Sec. 111.021. DIRECTOR OF OFFICE; STAFF. The  
14 administrative director, after consulting with the board, may hire  
15 a director to perform the administrative duties of the office. The  
16 administrative director may hire staff as necessary for the office.

17 Sec. 111.022. DIVISION OF RESPONSIBILITIES. The board  
18 shall develop and implement policies that clearly separate the  
19 policymaking responsibilities of the board and the management  
20 responsibilities of the director and the staff of the office.

21 Sec. 111.023. QUALIFICATIONS AND STANDARDS OF CONDUCT  
22 INFORMATION. The director of the office or the director's designee  
23 shall provide to members of the board and to office staff, as often  
24 as necessary, information regarding the requirements for office or  
25 employment under this chapter, including information regarding a  
26 person's responsibilities under applicable laws relating to  
27 standards of conduct for state officers or employees.

1       Sec. 111.024. STRATEGIC PLAN. (a) The office shall  
2 develop a comprehensive, long-range strategic plan for its  
3 operations. Each even-numbered year, the office shall issue a plan  
4 covering five fiscal years beginning the next odd-numbered fiscal  
5 year.

6       (b) The strategic plan must include measurable goals and a  
7 system of performance measures that:

8               (1) relates directly to the purposes of the office;  
9 and

10              (2) focuses on the results and outcomes of the office's  
11 operations.

12       (c) Not later than December 15 of each year, the office  
13 shall report the performance measures included in the strategic  
14 plan under this section to:

15              (1) the administrative director;

16              (2) the supreme court;

17              (3) the Department of Aging and Disability Services;

18              (4) the governor;

19              (5) the lieutenant governor; and

20              (6) the speaker of the house of representatives.

21       (d) In preparing the budget for the Office of Court  
22 Administration, the administrative director shall:

23              (1) consider the goals and performance measures  
24 identified in the strategic plan; and

25              (2) identify additional goals and performance  
26 measures as necessary.

1 [Sections 111.025-111.040 reserved for expansion]

2 SUBCHAPTER C. POWERS AND DUTIES

3 Sec. 111.041. GENERAL POWERS AND DUTIES OF OFFICE REGARDING  
4 GUARDIANSHIP MATTERS. The office shall:

5 (1) develop a statewide, uniform system for use by  
6 county clerks in identifying guardianships pending in each county;

7 (2) establish other methods to facilitate and  
8 encourage use of appropriate and less restrictive alternatives to  
9 guardianship in addition to the informational brochure developed  
10 under Section 111.049;

11 (3) periodically review state funding received for the  
12 provision of guardianship services or other less restrictive types  
13 of assistance to incapacitated persons and make legislative  
14 recommendations as necessary;

15 (4) apply for any grants or other sources of federal  
16 funds for which the office may be eligible, including any federal  
17 funds that may be available under the federal Older Americans Act of  
18 1965 (42 U.S.C. Section 3001 et seq.);

19 (5) provide support and technical expertise regarding  
20 guardianship-related issues to members of the judiciary;

21 (6) educate members of the judiciary and the public  
22 about less restrictive alternatives to guardianship; and

23 (7) review and comment on the guardianship policies of  
24 all health and human services agencies and recommend changes to the  
25 policies the office considers necessary or advisable.

26 Sec. 111.042. REGISTRY OF GUARDIANSHIP PROGRAMS. The  
27 office shall establish and maintain a central registry of all

1 guardianship programs operating in this state.

2 Sec. 111.043. REGISTRY OF PRIVATE PROFESSIONAL GUARDIANS.

3 The office shall establish and maintain a central registry of all  
4 private professional guardians registered with county clerks under  
5 Section 697, Texas Probate Code.

6 Sec. 111.044. COLLECTION OF GUARDIANSHIP STATISTICS.

7 (a) The Texas Judicial Council shall collect, maintain, and  
8 publish statistics by county relating to guardianship proceedings  
9 of incapacitated persons other than minors, as defined by Section  
10 601, Texas Probate Code, in the form and manner prescribed by  
11 Section 71.035.

12 (b) The Texas Judicial Council shall report:

13 (1) the number of court-initiated guardianship  
14 requests under Section 683, Texas Probate Code;

15 (2) the number of applications filed for guardianship  
16 of the person of an adult who is alleged to be incapacitated;

17 (3) the number of applications filed for guardianship  
18 of the estate of an adult who is alleged to be incapacitated;

19 (4) the number of applications filed for guardianship  
20 of both the person and estate of an adult who is alleged to be  
21 incapacitated;

22 (5) whether the person applying for a guardianship is  
23 a family member or friend of the proposed ward or is a guardian ad  
24 litem, private professional guardian, or local guardianship  
25 program;

26 (6) a categorical description of the alleged  
27 incapacity of the proposed wards, such as dementia, stroke, mental

1 retardation, brain injury, or chronic mental illness;

2 (7) whether the filing fee was waived based on the fact  
3 that the alleged incapacitated adult is indigent;

4 (8) the number of guardianships of the person granted  
5 by the court during the period;

6 (9) the number of guardianships of the estate granted  
7 by the court during the period;

8 (10) the number of guardianships of both the person  
9 and estate that were granted by the court during the period;

10 (11) the number of applications for complete  
11 restoration of a ward's capacity or for modification of a  
12 guardianship filed during the period;

13 (12) the number of guardianships of the person closed  
14 by the court during the period;

15 (13) the number of guardianships of the estate closed  
16 by the court during the period;

17 (14) the number of guardianships of both the person  
18 and estate that were closed by the court during the period; and

19 (15) any other information considered necessary by the  
20 office.

21 Sec. 111.045. DIRECTORY. (a) The office shall compile, in  
22 the most cost-efficient form, a directory of guardianship programs  
23 and private professional guardians operating in this state.

24 (b) The office at least annually shall update the directory  
25 and provide access to the directory on the Internet website of the  
26 Office of Court Administration or in another written form.

27 Sec. 111.046. GUARDIANSHIP RESOURCE ACCOUNT. (a) The

1 guardianship resource account is created as a dedicated account in  
2 the general revenue fund. Money in the fund may be appropriated  
3 only to provide funding for purposes consistent with this chapter.

4 (b) The administrative director shall deposit in the  
5 guardianship resource account all funds collected for the office or  
6 appropriated to the Office of Court Administration for purposes of  
7 the office as provided by:

8 (1) this chapter; and

9 (2) Chapter X, Texas Probate Code.

10 (c) Each fiscal year, the office shall set aside an amount  
11 of funds from the guardianship resource account sufficient to pay  
12 anticipated expenses and claims on the guardianship resource  
13 account under Chapter X, Texas Probate Code.

14 Sec. 111.047. DONATIONS. The office may accept and solicit  
15 gifts or grants of property from public or private sources for the  
16 purposes of this chapter. Funds received under this section shall  
17 be deposited in the guardianship resource account.

18 Sec. 111.048. FUNDING FOR GUARDIANSHIP AND RELATED  
19 SERVICES. (a) The office shall develop and implement a plan for  
20 the distribution of state and other funds received for purposes of  
21 this chapter to guardianship programs and other providers of  
22 services that are considered alternatives to guardianship.

23 (b) The plan must provide for:

24 (1) state funding to be distributed to guardianship  
25 programs and providers of services that are considered alternatives  
26 to guardianship:

27 (A) only as specifically directed by the terms of

1 a grant or contract to provide guardianship and related services;  
2 and

3 (B) in a manner that rewards a county that  
4 chooses to make significant contributions to the funding of  
5 guardianship programs operated by or located in the county;

6 (2) procedures to ensure that funds received by the  
7 Office of Court Administration for purposes of the office are  
8 disbursed in accordance with the terms under which that agency  
9 received the funds; and

10 (3) a reporting mechanism to ensure appropriate use of  
11 funds.

12 (c) The plan must also be designed in a manner that fosters  
13 the establishment and growth of guardianship programs to provide  
14 guardianships or other less restrictive types of assistance or  
15 services to incapacitated individuals residing in the areas served  
16 by those programs.

17 Sec. 111.049. INFORMATIONAL BROCHURE. (a) The office  
18 shall develop and update as necessary an informational brochure  
19 describing various types of less restrictive alternatives to  
20 guardianship that are available to elderly or disabled persons,  
21 including:

22 (1) a durable power of attorney;

23 (2) a special needs trust;

24 (3) a representative payee designated by a federal  
25 agency to manage a person's federal benefits; and

26 (4) a bill payer.

27 (b) The board shall prescribe the form and contents of the



1 informational brochure.

2 (c) Instead of publishing the informational brochure in  
3 written form, the office may distribute the informational brochure  
4 to the Department of Aging and Disability Services for purposes of  
5 displaying the contents of the brochure on the department's  
6 Internet website.

7 Sec. 111.050. USE OF OFFICE FUNDS. (a) The office may not  
8 spend for the office's administrative costs more than 22 percent of  
9 the funds received each fiscal year to implement this chapter.

10 (b) The portion of the funds received by the office to  
11 implement this chapter that are not spent for the office's  
12 administrative costs must be distributed as directed by grants or  
13 contracts in accordance with the plan established under Section  
14 111.048.

15 [Sections 111.051-111.060 reserved for expansion]

16 SUBCHAPTER D. REGULATION OF CERTAIN GUARDIANS

17 Sec. 111.061. STANDARDS FOR CERTAIN GUARDIANSHIPS AND  
18 ALTERNATIVES TO GUARDIANSHIP. (a) The board shall adopt minimum  
19 standards for:

20 (1) the provision of guardianship services or other  
21 similar but less restrictive types of assistance or services by:

22 (A) guardianship programs; and

23 (B) private professional guardians; and

24 (2) the provision of guardianship services by the  
25 Department of Aging and Disability Services.

26 (b) The board shall design the standards to protect the  
27 interests of an incapacitated person or other person needing

1 assistance making decisions concerning the person's own welfare or  
2 financial affairs.

3 Sec. 111.062. CERTIFICATION REQUIRED FOR CERTAIN  
4 GUARDIANS. (a) To provide guardianship services in this state,  
5 the following individuals must hold a certificate issued under this  
6 section:

7 (1) an individual who is a private professional  
8 guardian;

9 (2) an individual who will provide those services to a  
10 ward of a private professional guardian or the Department of Aging  
11 and Disability Services on the guardian's or department's behalf;  
12 and

13 (3) an individual, other than a volunteer, who will  
14 provide those services to a ward of a guardianship program on the  
15 program's behalf.

16 (b) An applicant for a certificate under this section must:

17 (1) apply to the office on a form prescribed by the  
18 board; and

19 (2) submit with the application a nonrefundable  
20 application fee in an amount determined by the board, subject to the  
21 approval of the supreme court.

22 (c) The supreme court may adopt rules and procedures for  
23 issuing a certificate and for renewing, suspending, or revoking a  
24 certificate issued under this section. Any rules adopted by the  
25 supreme court under this section must:

26 (1) ensure compliance with the standards adopted under  
27 Section 111.061;

1           (2) provide that the board establish qualifications  
2 for obtaining and maintaining certification;

3           (3) provide that the board issue certificates under  
4 this section;

5           (4) provide that a certificate expires on the second  
6 anniversary of the date the certificate is issued;

7           (5) prescribe procedures for accepting complaints and  
8 conducting investigations of alleged violations of the minimum  
9 standards adopted under Section 111.061 or other terms of the  
10 certification by certificate holders; and

11           (6) prescribe procedures by which the office, after  
12 notice and hearing, may suspend or revoke the certificate of a  
13 holder who fails to substantially comply with appropriate standards  
14 or other terms of the certification.

15           (d) If the requirements for issuing a certificate under this  
16 section include passage of an examination covering guardianship  
17 education requirements, the office shall:

18                   (1) develop and administer the examination; or

19                   (2) contract with another person or entity the board  
20 determines has the expertise and resources to develop and  
21 administer the examination.

22           (e) In lieu of the certification requirements imposed under  
23 this section, the board may issue a certificate to an individual to  
24 engage in business as a guardian or to provide guardianship  
25 services in this state if the individual:

26                   (1) submits an application to the office in the form  
27 prescribed by the board;

1           (2) pays a fee in a reasonable amount determined by the  
2 board, subject to the approval of the supreme court;

3           (3) is certified, registered, or licensed as a  
4 guardian by a national organization or association the board  
5 determines has requirements at least as stringent as those  
6 prescribed by the board under this subchapter; and

7           (4) is in good standing with the organization or  
8 association with whom the person is licensed, certified, or  
9 registered.

10          (f) An application or other fee collected under this section  
11 shall be deposited in the guardianship resource account.

12          Sec. 111.063. INFORMATION FROM PRIVATE PROFESSIONAL  
13 GUARDIANS. In addition to the information submitted under Section  
14 697(e), Texas Probate Code, the office may require a private  
15 professional guardian or a person who represents or plans to  
16 represent the interests of a ward as a guardian on behalf of the  
17 private professional guardian to submit information considered  
18 necessary to monitor the person's compliance with the applicable  
19 standards adopted under Section 111.061 or with the certification  
20 requirements of Section 111.062.

21          SECTION 3.27. Section 3, Texas Probate Code, is amended by  
22 adding Subsection (nn) to read as follows:

23          (nn) "Guardianship Alliance Office" means the Guardianship  
24 Alliance Office established under Chapter 111, Government Code.

25          SECTION 3.28. The heading of Chapter X, Texas Probate Code,  
26 is amended to read as follows:

1 CHAPTER X. PAYMENT OF ESTATES TO GUARDIANSHIP RESOURCE ACCOUNT

2 [~~INTO STATE TREASURY~~]

3 SECTION 3.29. Sections 427, 430, and 431, Texas Probate  
4 Code, are amended to read as follows:

5 Sec. 427. WHEN ESTATES TO BE PAID TO GUARDIANSHIP RESOURCE  
6 ACCOUNT [~~INTO STATE TREASURY~~]. (a) If any person entitled to a  
7 portion of an estate, except a resident minor without a guardian,  
8 shall not demand his portion from the executor or administrator  
9 within six months after an order of court approving the report of  
10 commissioners of partition, or within six months after the  
11 settlement of the final account of an executor or administrator, as  
12 the case may be, the court by written order shall require the  
13 executor or administrator to pay so much of said portion as is in  
14 money to the comptroller; and such portion as is in other property  
15 he shall order the executor or administrator to sell on such terms  
16 as the court thinks best, and, when the proceeds of such sale are  
17 collected, the court shall order the same to be paid to the  
18 comptroller, in all such cases allowing the executor or  
19 administrator reasonable compensation for his services. A suit to  
20 recover proceeds of the sale is governed by Section 433 of this  
21 Code.

22 (b) The comptroller shall deposit funds received under this  
23 section to the credit of the guardianship resource account  
24 established under Subchapter C, Chapter 111, Government Code.

25 Sec. 430. RECEIPT [~~OF COMPTROLLER~~]. Whenever an executor  
26 or administrator pays the comptroller any funds of the estate he  
27 represents, under the preceding provisions of this Code, he shall

1 take from the comptroller a receipt for such payment, with official  
2 seal attached, and shall file the same with the clerk of the court  
3 ordering such payment; and such receipt shall be recorded in the  
4 minutes of the court.

5       Sec. 431. PENALTY FOR FAILURE TO MAKE PAYMENTS [~~TO~~  
6 ~~COMPTROLLER~~]. When an executor or administrator fails to pay to the  
7 comptroller any funds of an estate which he has been ordered by the  
8 court so to pay, within 30 days after such order has been made, such  
9 executor or administrator shall, after personal service of citation  
10 charging such failure and after proof thereof, be liable to pay out  
11 of his own estate to the comptroller damages thereon at the rate of  
12 five per cent per month for each month, or fraction thereof, that he  
13 fails to make such payment after 30 days from such order, which  
14 damages may be recovered in any court of competent jurisdiction.

15       SECTION 3.30. Subsections (a) and (c), Section 433, Texas  
16 Probate Code, are amended to read as follows:

17       (a) Mode of Recovery. When funds of an estate have been paid  
18 to the comptroller under this chapter, any heir, devisee, or  
19 legatee of the estate, or their assigns, or any of them, may recover  
20 the portion of such funds to which he, she, or they are entitled.  
21 The person claiming such funds shall institute suit on or before the  
22 fourth anniversary of the date of the order requiring payment to the  
23 comptroller, by petition filed in the district court of Travis  
24 County, against the comptroller, setting forth the plaintiff's  
25 right to such funds, and the amount claimed by him.

26       (c) Procedure. The proceedings in such suit shall be  
27 governed by the rules for other civil suits; and, should the

1 plaintiff establish his right to the funds claimed, he shall have a  
2 judgment therefor, which shall specify the amount to which he is  
3 entitled; and a certified copy of such judgment shall be sufficient  
4 authority for the comptroller to pay the same from the guardianship  
5 resource account established under Subchapter C, Chapter 111,  
6 Government Code. To the extent that funds are not available in the  
7 guardianship resource account, the comptroller shall pay the amount  
8 to which the plaintiff is entitled from the general revenue fund  
9 until funds become available in the guardianship resource account.

10 SECTION 3.31. STUDY. (a) The Guardianship Alliance Office  
11 shall conduct a study regarding the feasibility of establishing and  
12 administering a pooled income trust for families of incapacitated  
13 individuals in this state.

14 (b) Not later than January 1, 2007, the Guardianship  
15 Alliance Office shall report the findings and conclusions of the  
16 study required under this section to the governor, lieutenant  
17 governor, speaker of the house of representatives, and presiding  
18 officer of each standing committee of the senate and house of  
19 representatives having jurisdiction over guardianship matters.

20 SECTION 3.32. TRANSFERS TO THE DEPARTMENT OF AGING AND  
21 DISABILITY SERVICES. (a) On September 1, 2005:

22 (1) all powers, duties, functions, programs, and  
23 activities of the Department of Family and Protective Services  
24 related to providing guardianship services for incapacitated  
25 persons under Chapter 48, Human Resources Code, Chapter XIII, Texas  
26 Probate Code, or other law are transferred to the Department of  
27 Aging and Disability Services;

1           (2) all employees of the Department of Family and  
2 Protective Services who primarily perform duties related to  
3 providing guardianship services for incapacitated persons under  
4 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
5 or other law become employees of the Department of Aging and  
6 Disability Services;

7           (3) a rule or form adopted by the executive  
8 commissioner of the Health and Human Services Commission that  
9 relates to the provision of guardianship services by the Department  
10 of Family and Protective Services for incapacitated persons under  
11 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
12 or other law, as those laws existed immediately before that date, is  
13 a rule or form of the Department of Aging and Disability Services  
14 and remains in effect until altered by the executive commissioner;

15           (4) a reference in law to the Department of Family and  
16 Protective Services that relates to providing guardianship  
17 services for incapacitated persons under Chapter 48, Human  
18 Resources Code, Chapter XIII, Texas Probate Code, or other law  
19 means the Department of Aging and Disability Services;

20           (5) a waiver in effect that was issued by the  
21 Department of Family and Protective Services relating to the  
22 provision of guardianship services for incapacitated persons under  
23 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
24 or other law is continued in effect as a waiver of the Department of  
25 Aging and Disability Services;

26           (6) a proceeding involving the Department of Family  
27 and Protective Services that is related to providing guardianship



1 services for incapacitated persons under Chapter 48, Human  
2 Resources Code, Chapter XIII, Texas Probate Code, or other law is  
3 transferred without change in status to the Department of Aging and  
4 Disability Services, and the Department of Aging and Disability  
5 Services assumes, without a change in status, the position of the  
6 Department of Family and Protective Services in a proceeding  
7 relating to guardianship matters to which the Department of Family  
8 and Protective Services is a party;

9 (7) all money, contracts, leases, rights, and  
10 obligations of the Department of Family and Protective Services  
11 related to providing guardianship services for incapacitated  
12 persons under Chapter 48, Human Resources Code, Chapter XIII, Texas  
13 Probate Code, or other law are transferred to the Department of  
14 Aging and Disability Services, subject to Subsection (b) of this  
15 section;

16 (8) all property and records in the custody of the  
17 Department of Family and Protective Services related to providing  
18 guardianship services for incapacitated persons under Chapter 48,  
19 Human Resources Code, Chapter XIII, Texas Probate Code, or other  
20 law shall be transferred to the Department of Aging and Disability  
21 Services; and

22 (9) all funds appropriated by the legislature to the  
23 Department of Family and Protective Services for purposes related  
24 to providing guardianship services for incapacitated persons under  
25 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
26 or other law are transferred to the Department of Aging and  
27 Disability Services.

1           (b) The Department of Aging and Disability Services shall  
2 administer a contract of the Department of Family and Protective  
3 Services transferred under Subdivision (7), Subsection (a), of this  
4 section, until the contract expires or is otherwise lawfully  
5 terminated. The Department of Aging and Disability Services,  
6 however, may not renew the contract.

7           SECTION 3.33. TRANSITION PLAN. The executive commissioner  
8 of the Health and Human Services Commission shall establish a plan  
9 for the transfer of guardianship cases of the Department of Family  
10 and Protective Services to the Department of Aging and Disability  
11 Services on or before the period prescribed by the executive  
12 commissioner.

13           SECTION 3.34. PLAN TO TRANSFER STATE GUARDIANSHIPS TO LOCAL  
14 ENTITIES. (a) Notwithstanding any other provision of this Act,  
15 the Guardianship Alliance Office established under Chapter 111,  
16 Government Code, as added by this Act, shall develop a plan for the  
17 transfer of all powers, duties, functions, programs, and activities  
18 of the Department of Aging and Disability Services related to  
19 providing guardianship services for incapacitated persons under  
20 Chapter 161, Human Resources Code, as amended by this Act, Chapter  
21 XIII, Texas Probate Code, as amended by this Act, or other law to  
22 the counties.

23           (b) Not later than November 1, 2006, the Guardianship  
24 Alliance Office shall submit to the 79th Legislature a report  
25 regarding the plan developed by the office under this section. The  
26 report must include the office's recommendations for any statutory  
27 changes required to facilitate the plan and any modifications to

1 the Department of Aging and Disability Services' policies,  
2 procedures, or administration that are necessary to facilitate the  
3 transfer.

4 SECTION 3.35. ABOLITION OF GUARDIANSHIP ADVISORY BOARD. On  
5 the effective date of this Act:

6 (1) the term of a member of the Guardianship Advisory  
7 Board created under Subchapter D, Chapter 531, Government Code,  
8 repealed by this Act, serving immediately before that date expires;  
9 and

10 (2) the advisory board is abolished.

11 SECTION 3.36. PROPOSED RULES AND PROCEDURES. Not later  
12 than March 1, 2006, the Guardianship Alliance Board established  
13 under Chapter 111, Government Code, as added by this Act, shall  
14 develop rules and procedures for consideration by the supreme court  
15 as required by Chapter 111, Government Code, as added by this Act.

16 SECTION 3.37. APPOINTMENT OF BOARD MEMBERS. (a) As soon  
17 as practicable after the effective date of this Act, the presiding  
18 judge of the statutory probate courts shall appoint 11 members to  
19 the Guardianship Alliance Board in accordance with Chapter 111,  
20 Government Code, as added by this Act. In making the initial  
21 appointments, the presiding judge shall designate three members for  
22 terms expiring February 1, 2007, four members for terms expiring  
23 February 1, 2009, and four members for terms expiring February 1,  
24 2011.

25 (b) As soon as practicable after the effective date of this  
26 Act, the supreme court shall appoint four members to the  
27 Guardianship Alliance Board in accordance with Chapter 111,

1 Government Code, as added by this Act. In making the initial  
2 appointments, the supreme court shall designate two members for  
3 terms expiring February 1, 2007, one member for a term expiring  
4 February 1, 2009, and one member for a term expiring February 1,  
5 2011.

6 SECTION 3.38. EFFECTIVE DATE OF CERTIFICATION. A person is  
7 not required to hold a certificate issued under Subchapter D,  
8 Chapter 111, Government Code, as added by this Act, to provide or  
9 continue to provide guardianship services to a ward before  
10 September 1, 2007.

11 SECTION 3.39. The following are repealed:

12 (1) Subsections (d), (e), and (f), Section 48.209,  
13 Human Resources Code; and

14 (2) Subchapter D, Chapter 531, Government Code.

15 ARTICLE 4. EFFECTIVE DATE

16 SECTION 4.01. This Act takes effect September 1, 2005.