

AN ACT

relating to protective services and certain family law matters;  
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

1 received the equivalent of a high school diploma, whichever date is  
2 earliest; or

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

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

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

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

15 (1) was adopted; and

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

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

24 SECTION 1.03. Section 101.024, Family Code, is amended to  
25 read as follows:

26 Sec. 101.024. PARENT. (a) "Parent" means the mother, a  
27 man presumed to be the father, a man legally determined to be the

1 father, a man who has been adjudicated to be the father by a court of  
2 competent jurisdiction, a man who has acknowledged his paternity  
3 under applicable law, or an adoptive mother or father. Except as  
4 provided by Subsection (b), the ~~[The]~~ term does not include a parent  
5 as to whom the parent-child relationship has been terminated.

6 (b) For purposes of establishing, determining the terms of,  
7 modifying, or enforcing an order, a reference in this title to a  
8 parent includes a person ordered to pay child support under Section  
9 154.001(a-1) or to provide medical support for a child.

10 SECTION 1.04. (a) Section 107.004, Family Code, is amended  
11 to read as follows:

12 Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR  
13 CHILD. (a) Except as otherwise provided by this chapter, the  
14 attorney ad litem appointed for a child shall:

15 (1) seek to elicit in a developmentally appropriate  
16 manner the child's expressed objectives of representation;

17 (2) advise the child;

18 (3) provide guidance to the child;

19 (4) represent the child's expressed objectives of  
20 representation and follow the child's expressed objectives of  
21 representation during the course of litigation if the attorney ad  
22 litem determines that the child is competent to understand the  
23 nature of an attorney-client relationship and has formed that  
24 relationship with the attorney ad litem;

25 (5) consider the impact on the child in formulating  
26 the attorney ad litem's presentation of the child's expressed  
27 objectives of representation to the court; and

1 (6) become familiar with:

2 (A) the American Bar Association's standards of  
3 practice for attorneys who represent children in abuse and neglect  
4 cases; and

5 (B) the suggested amendments to those standards  
6 adopted by the National Association of Counsel for Children.

7 (b) An attorney ad litem appointed for a child in a  
8 proceeding under Chapter 262 or 263 shall complete at least three  
9 hours of continuing legal education relating to child advocacy as  
10 described by Subsection (c) as soon as practicable after the  
11 attorney ad litem's appointment. An attorney ad litem is not  
12 required to comply with this subsection if the court finds that the  
13 attorney ad litem has experience equivalent to the required  
14 education.

15 (c) The continuing legal education required by Subsection  
16 (b) must:

17 (1) be low-cost and available to persons throughout  
18 this state, including on the Internet provided through the State  
19 Bar of Texas; and

20 (2) focus on the duties of an attorney ad litem in, and  
21 the procedures of and best practices for, a proceeding under  
22 Chapter 262 or 263.

23 (d) Except as provided by Subsection (e), an attorney ad  
24 litem appointed for a child in a proceeding under Chapter 262 or 263  
25 shall meet before each court hearing with:

26 (1) the child, if the child is at least four years of  
27 age; or

1           (2) the individual with whom the child ordinarily  
2 resides, including the child's parent, conservator, guardian,  
3 caretaker, or custodian, if the child is younger than four years of  
4 age.

5           (e) An attorney ad litem appointed for a child in a  
6 proceeding under Chapter 262 or 263 is not required to comply with  
7 Subsection (d) before a hearing if the court finds at that hearing  
8 that the attorney ad litem has shown good cause why the attorney ad  
9 litem's compliance with that subsection is not feasible or in the  
10 best interest of the child.

11           (b) The changes in law made by this section apply only to an  
12 attorney ad litem for a child appointed in a proceeding under  
13 Chapter 262 or 263, Family Code, on or after the effective date of  
14 this section. An attorney ad litem for a child appointed in a  
15 proceeding under Chapter 262 or 263, Family Code, before the  
16 effective date of this section is governed by the law in effect on  
17 the date the attorney ad litem was appointed, and the former law is  
18 continued in effect for that purpose.

19           (c) The State Bar of Texas shall adopt rules governing the  
20 reporting of an attorney ad litem's timely completion of the  
21 continuing legal education required by Subsection (b), Section  
22 107.004, Family Code, as added by this section.

23           SECTION 1.05. 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 1.06. Section 107.013, Family Code, is amended by  
3 adding Subsection (c) to read as follows:

4 (c) In a suit filed by a governmental entity requesting  
5 temporary managing conservatorship of a child, the court shall  
6 appoint an attorney ad litem to represent the interests of an  
7 indigent parent of the child who responds in opposition to the suit.

8 SECTION 1.07. Subsection (c), Section 107.015, Family Code,  
9 is amended to read as follows:

10 (c) If indigency of the parents is shown, an attorney ad  
11 litem appointed to represent a child or parent in a suit filed by a  
12 governmental entity [~~in which termination of the parent-child~~  
13 ~~relationship is requested~~] shall be paid from the general funds of  
14 the county according to the fee schedule that applies to an attorney  
15 appointed to represent a child in a suit under Title 3 as provided  
16 by Chapter 51. The court may not award attorney ad litem fees under  
17 this chapter against the state, a state agency, or a political  
18 subdivision of the state except as provided by this subsection.

19 SECTION 1.08. (a) Section 154.001, Family Code, is amended  
20 by adding Subsection (a-1) to read as follows:

21 (a-1) The court may order each person who is financially  
22 able and whose parental rights have been terminated with respect to  
23 a child in substitute care for whom the department has been  
24 appointed managing conservator to support the child in the manner  
25 specified by the order:

26 (1) until the earliest of:

27 (A) the child's adoption;

1                   (B) the child's 18th birthday or graduation from  
2 high school, whichever occurs later;

3                   (C) removal of the child's disabilities of  
4 minority by court order, marriage, or other operation of law; or

5                   (D) the child's death; or

6                   (2) if the child is disabled as defined in this  
7 chapter, for an indefinite period.

8           (b) Section 154.001, Family Code, as amended by this  
9 section, applies only to a person whose parent-child relationship  
10 with respect to a child is terminated on or after the effective  
11 date of this section. A person whose parent-child relationship is  
12 terminated before the effective date of this section is governed by  
13 the law in effect on the date the parent-child relationship was  
14 terminated, and the former law is continued in effect for that  
15 purpose.

16           SECTION 1.09. Section 162.304, Family Code, is amended by  
17 adding Subsection (f) to read as follows:

18           (f) Subject to the availability of funds, the department  
19 shall work with the Health and Human Services Commission and the  
20 federal government to develop a program to provide medical  
21 assistance under Chapter 32, Human Resources Code, to children who  
22 were in the conservatorship of the department at the time of  
23 adoptive placement and need medical or rehabilitative care but do  
24 not qualify for adoption assistance.

25           SECTION 1.10. Subchapter B, Chapter 231, Family Code, is  
26 amended by adding Section 231.122 to read as follows:

27           Sec. 231.122. MONITORING CHILD SUPPORT CASES; ENFORCEMENT.

1 The Title IV-D agency shall monitor each Title IV-D case from the  
2 date the agency begins providing services on the case. If a child  
3 support obligor in a Title IV-D case becomes more than 60 days  
4 delinquent in paying child support, the Title IV-D agency shall  
5 expedite the commencement of an action to enforce the child support  
6 order.

7 SECTION 1.11. Subdivisions (2) and (4), Section 261.001,  
8 Family Code, are amended to read as follows:

9 (2) "Department" means the Department of Family and  
10 Protective [~~and Regulatory~~] Services.

11 (4) "Neglect" includes:

12 (A) the leaving of a child in a situation where  
13 the child would be exposed to a substantial risk of physical or  
14 mental harm, without arranging for necessary care for the child,  
15 and the demonstration of an intent not to return by a parent,  
16 guardian, or managing or possessory conservator of the child;

17 (B) the following acts or omissions by a person:

18 (i) placing a child in or failing to remove  
19 a child from a situation that a reasonable person would realize  
20 requires judgment or actions beyond the child's level of maturity,  
21 physical condition, or mental abilities and that results in bodily  
22 injury or a substantial risk of immediate harm to the child;

23 (ii) failing to seek, obtain, or follow  
24 through with medical care for a child, with the failure resulting in  
25 or presenting a substantial risk of death, disfigurement, or bodily  
26 injury or with the failure resulting in an observable and material  
27 impairment to the growth, development, or functioning of the child;



1 (iii) the failure to provide a child with  
2 food, clothing, or shelter necessary to sustain the life or health  
3 of the child, excluding failure caused primarily by financial  
4 inability unless relief services had been offered and refused; ~~or~~

5 (iv) placing a child in or failing to remove  
6 the child from a situation in which the child would be exposed to a  
7 substantial risk of sexual conduct harmful to the child; or

8 (v) placing a child in or failing to remove  
9 the child from a situation in which the child would be exposed to  
10 acts or omissions that constitute abuse under Subdivision (1)(E),  
11 (F), (G), (H), or (K) committed against another child; or

12 (C) the failure by the person responsible for a  
13 child's care, custody, or welfare to permit the child to return to  
14 the child's home without arranging for the necessary care for the  
15 child after the child has been absent from the home for any reason,  
16 including having been in residential placement or having run away.

17 SECTION 1.12. Section 261.002, Family Code, is amended by  
18 adding Subsection (c) to read as follows:

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

1 registry exists.

2 SECTION 1.13. The heading to Section 261.107, Family Code,  
3 is amended to read as follows:

4 Sec. 261.107. FALSE REPORT; CRIMINAL PENALTY; CIVIL  
5 PENALTY.

6 SECTION 1.14. (a) Section 261.107, Family Code, is amended  
7 by amending Subsection (a) and adding Subsections (d) and (e) to  
8 read as follows:

9 (a) A person commits an offense if, with the intent to  
10 deceive, the person knowingly [~~or intentionally~~] makes a report as  
11 provided in this chapter that [~~the person knows~~] is false [~~or lacks~~  
12 ~~factual foundation~~]. An offense under this subsection [~~section~~] is  
13 a state jail felony [~~Class A misdemeanor~~] unless it is shown on the  
14 trial of the offense that the person has previously been convicted  
15 under this section, in which case the offense is a [~~state jail~~  
16 felony of the third degree].

17 (d) The court shall order a person who is convicted of an  
18 offense under Subsection (a) to pay any reasonable attorney's fees  
19 incurred by the person who was falsely accused of abuse or neglect  
20 in any proceeding relating to the false report.

21 (e) A person who engages in conduct described by Subsection  
22 (a) is liable to the state for a civil penalty of \$1,000. The  
23 attorney general shall bring an action to recover a civil penalty  
24 authorized by this subsection.

25 (b) The changes in law made by Subsection (a), Section  
26 261.107, Family Code, as amended by this section, and Subsection  
27 (d), Section 261.107, Family Code, as added by this section, apply

1 only to an offense committed on or after the effective date of this  
2 section. An offense committed before the effective date of this  
3 section is covered by Section 261.107, Family Code, as it existed on  
4 the date the offense was committed, and the former law is continued  
5 in effect for that purpose. For purposes of this subsection, an  
6 offense is committed before the effective date of this section if  
7 any element of the offense occurs before that date.

8 (c) Subsection (e), Section 261.107, Family Code, as added  
9 by this section, applies only to conduct that occurs on or after the  
10 effective date of this section. Conduct that occurs before the  
11 effective date of this section is governed by the law in effect on  
12 the date the conduct occurred, and the former law is continued in  
13 effect for that purpose.

14 SECTION 1.15. Section 261.201, Family Code, is amended by  
15 adding Subsection (f-1) to read as follows:

16 (f-1) The department shall provide to a relative or other  
17 individual with whom a child is placed any information the  
18 department considers necessary to ensure that the relative or other  
19 individual is prepared to meet the needs of the child. The  
20 information required by this subsection may include information  
21 related to any abuse or neglect suffered by the child.

22 SECTION 1.16. (a) Subsections (a), (d), (f), (g), and (h),  
23 Section 261.301, Family Code, are amended to read as follows:

24 (a) With assistance from the appropriate state or local law  
25 enforcement agency as provided by this section, the department or  
26 designated agency shall make a prompt and thorough investigation of  
27 a report of child abuse or neglect allegedly committed by a person

1 responsible for a child's care, custody, or welfare. The  
2 investigation shall be conducted without regard to any pending suit  
3 affecting the parent-child relationship.

4 (d) The department shall [~~may~~] by rule assign priorities and  
5 prescribe investigative procedures for investigations based on the  
6 severity and immediacy of the alleged harm to the child. The  
7 primary purpose of the investigation shall be the protection of the  
8 child. The rules must require the department, subject to the  
9 availability of funds, to:

10 (1) immediately respond to a report of abuse and  
11 neglect that involves circumstances in which the death of the child  
12 or substantial bodily harm to the child would result unless the  
13 department immediately intervenes;

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

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

19 (f) An investigation of a report to the department [~~that is~~  
20 ~~assigned the highest priority in accordance with department rules~~  
21 ~~adopted under Subsection (d) and~~] that alleges that a child has been  
22 or may be the victim of conduct that constitutes a criminal offense  
23 that poses an immediate risk of physical or sexual abuse of a child  
24 that could result in the death of or serious harm to the child shall  
25 be conducted jointly by a peace officer, as defined by Article 2.12,  
26 Code of Criminal Procedure, from the appropriate local law  
27 enforcement agency and the department or the agency responsible for

1 conducting an investigation under Subchapter E.

2 (g) The inability or unwillingness of a local law  
3 enforcement agency to conduct a joint investigation under this  
4 section [~~Subsection (f)~~] does not constitute grounds to prevent or  
5 prohibit the department from performing its duties under this  
6 subtitle. The department shall document any instance in which a law  
7 enforcement agency is unable or unwilling to conduct a joint  
8 investigation under this section [~~Subsection (f)~~].

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

22 (b) The change in law made by this section to Section  
23 261.301, Family Code, applies to the investigation of a report of  
24 child abuse or neglect made on or after the effective date of this  
25 section. The investigation of a report of child abuse or neglect  
26 made before the effective date of this section is governed by the  
27 law in effect on the date the report was made, and the former law is

1 continued in effect for that purpose.

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

8 (d) The executive commissioner of the Health and Human  
9 Services Commission shall adopt the rules as required by Subsection  
10 (d), Section 261.301, Family Code, as amended by this section, not  
11 later than September 1, 2007.

12 SECTION 1.17. Subchapter D, Chapter 261, Family Code, is  
13 amended by adding Section 261.3011 to read as follows:

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

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

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

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

1       (b) The department shall collaborate with law enforcement  
2 agencies to provide to department investigators and law enforcement  
3 officers responsible for investigating reports of abuse and neglect  
4 joint training relating to methods to effectively conduct joint  
5 investigations under Section 261.301. The training must include  
6 information on interviewing techniques, evidence gathering, and  
7 testifying in court for criminal investigations, as well as  
8 instruction on rights provided by the Fourth Amendment to the  
9 United States Constitution.

10       SECTION 1.18. Subchapter D, Chapter 261, Family Code, is  
11 amended by adding Section 261.3012 to read as follows:

12       Sec. 261.3012. COMPLETION OF PAPERWORK. An employee of the  
13 department who responds to a report that is assigned the highest  
14 priority in accordance with department rules adopted under Section  
15 261.301(d) shall identify, to the extent reasonable under the  
16 circumstances, forms and other paperwork that can be completed by  
17 members of the family of the child who is the subject of the report.  
18 The department employee shall request the assistance of the child's  
19 family members in completing that documentation but remains  
20 responsible for ensuring that the documentation is completed in an  
21 appropriate manner.

22       SECTION 1.19. (a) Section 261.3015, Family Code, is  
23 amended by amending Subsection (a) and adding Subsection (a-1) to  
24 read as follows:

25       (a) In assigning priorities and prescribing investigative  
26 procedures based on the severity and immediacy of the alleged harm  
27 to a child under Section 261.301(d), the department [~~board by rule~~]

1 shall establish a flexible response system to allow the department  
2 to make the most effective use of ~~[allocate]~~ resources by  
3 investigating serious cases of abuse and neglect and by screening  
4 out less serious cases of abuse and neglect if the department  
5 determines, after contacting a professional or other credible  
6 source, that the child's safety can be assured without further  
7 investigation. The department may administratively close the less  
8 serious cases without providing services or making a referral to  
9 another entity for assistance ~~[providing assessment and family~~  
10 ~~preservation services in less serious cases]~~.

11 (a-1) For purposes of Subsection (a), a case is considered  
12 to be a less serious case of abuse or neglect if the circumstances  
13 of the case do not indicate an immediate risk of abuse or neglect  
14 that could result in the death of or serious harm to the child who is  
15 the subject of the case.

16 (b) To ensure the safety of children, the Department of  
17 Family and Protective Services shall use highly skilled caseworkers  
18 to perform the screening functions described by Subsection (a),  
19 Section 261.3015, Family Code, as amended by this section, and  
20 develop standardized policy guidelines, including accountability  
21 measures to monitor closed cases, to ensure that screening  
22 guidelines do not result in the closing of cases that should not be  
23 closed.

24 SECTION 1.20. Subchapter D, Chapter 261, Family Code, is  
25 amended by adding Section 261.3016 to read as follows:

26 Sec. 261.3016. TRAINING OF PERSONNEL RECEIVING REPORTS OF  
27 ABUSE AND NEGLECT. The department shall develop, in cooperation



1 with local law enforcement officials and the Commission on State  
2 Emergency Communications, a training program for department  
3 personnel who receive reports of abuse and neglect. The training  
4 program must include information on:

5 (1) the proper methods of screening reports of abuse  
6 and neglect; and

7 (2) ways to determine the seriousness of a report,  
8 including determining whether a report alleges circumstances that  
9 could result in the death of or serious harm to a child or whether  
10 the report is less serious in nature.

11 SECTION 1.21. Section 261.302, Family Code, is amended by  
12 adding Subsections (b-1) and (f) and amending Subsection (e) to  
13 read as follows:

14 (b-1) Before the department may transport a child as  
15 provided by Subsection (b)(3), the department shall attempt to  
16 notify the parent or other person having custody of the child of the  
17 transport.

18 (e) An interview with a child conducted by the department  
19 during the investigation stage shall be audiotaped or videotaped.

20 An interview with a child alleged to be a victim of physical abuse  
21 or sexual abuse conducted by an investigating agency other than the  
22 department shall be audiotaped or videotaped unless the  
23 investigating agency determines that good cause exists for not  
24 audiotaping or videotaping the interview in accordance with rules  
25 of the agency. Good cause may include, but is not limited to, such  
26 considerations as the age of the child and the nature and  
27 seriousness of the allegations under investigation. Nothing in

1 this subsection shall be construed as prohibiting the investigating  
2 agency from audiotaping or videotaping an interview of a child on  
3 any case for which such audiotaping or videotaping is not required  
4 under this subsection. The fact that the investigating agency  
5 failed to audiotape or videotape an interview is admissible at the  
6 trial of the offense that is the subject of the interview.

7 (f) A person commits an offense if the person is notified of  
8 the time of the transport of a child by the department and the  
9 location from which the transport is initiated and the person is  
10 present at the location when the transport is initiated and  
11 attempts to interfere with the department's investigation. An  
12 offense under this subsection is a Class B misdemeanor. It is an  
13 exception to the application of this subsection that the department  
14 requested the person to be present at the site of the transport.

15 SECTION 1.22. Subchapter D, Chapter 261, Family Code, is  
16 amended by adding Sections 261.3021, 261.3022, 261.3023, and  
17 261.3024 to read as follows:

18 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT.  
19 Subject to the appropriation of money for these purposes, the  
20 department shall:

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

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

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

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

7           (5) use current data reporting systems to provide  
8 department supervisors and management with easier access to  
9 information; and

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

12           Sec. 261.3022. CHILD SAFETY CHECK ALERT LIST. (a) Subject  
13 to the availability of funds, the Department of Public Safety of the  
14 State of Texas shall create a child safety check alert list as part  
15 of the Texas Crime Information Center to help locate a family for  
16 purposes of investigating a report of child abuse or neglect.

17           (b) If the child safety check alert list is established and  
18 the department is unable to locate a family for purposes of  
19 investigating a report of child abuse or neglect, after the  
20 department has exhausted all means available to the department for  
21 locating the family, the department may seek assistance under this  
22 section from the appropriate county attorney, district attorney, or  
23 criminal district attorney with responsibility for representing  
24 the department as provided by Section 264.009.

25           (c) If the department requests assistance, the county  
26 attorney, district attorney, or criminal district attorney, as  
27 applicable, may file an application with the court requesting the

1 issuance of an ex parte order requiring the Texas Crime Information  
2 Center to place the members of the family the department is  
3 attempting to locate on a child safety check alert list. The  
4 application must include a summary of:

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

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

8 (d) If the court determines after a hearing that the  
9 department has exhausted all means available to the department for  
10 locating the family, the court shall approve the application and  
11 order the appropriate law enforcement agency to notify the Texas  
12 Crime Information Center to place the family on a child safety check  
13 alert list. The alert list must include:

14 (1) the name of the family member alleged to have  
15 abused or neglected a child according to the report the department  
16 is attempting to investigate;

17 (2) the name of the child who is the subject of the  
18 report;

19 (3) a code identifying the type of child abuse or  
20 neglect alleged to have been committed against the child;

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

22 (5) the minimum criteria for an entry as established  
23 by the center.

24 Sec. 261.3023. LAW ENFORCEMENT RESPONSE TO CHILD SAFETY  
25 CHECK ALERT. (a) If a law enforcement officer encounters a person  
26 listed on the Texas Crime Information Center's child safety check  
27 alert list who is alleged to have abused or neglected a child, or

1 encounters a child listed on the alert list who is the subject of a  
2 report of child abuse or neglect the department is attempting to  
3 investigate, the officer shall request information from the person  
4 or the child regarding the child's well-being and current  
5 residence.

6 (b) If the law enforcement officer determines that the  
7 circumstances described by Section 262.104 exist, the officer may  
8 take possession of the child without a court order as authorized by  
9 that section if the officer is able to locate the child. If the  
10 circumstances described by Section 262.104 do not exist, the  
11 officer shall obtain the child's current address and any other  
12 relevant information and report that information to the department.

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

14 (a) A law enforcement officer who locates a child listed on the  
15 Texas Crime Information Center's child safety check alert list who  
16 is the subject of a report of child abuse or neglect the department  
17 is attempting to investigate and who reports the child's current  
18 address and other relevant information to the department under  
19 Section 261.3023 shall report to the Texas Crime Information Center  
20 that the child has been located.

21 (b) If the department locates a child described by  
22 Subsection (a) through a means other than information reported by a  
23 law enforcement officer under Subsection (a), the department shall  
24 report to the Texas Crime Information Center that the child has been  
25 located.

26 (c) On receipt of notice under this section that a child has  
27 been located, the Texas Crime Information Center shall remove the

1 child and the child's family from the child safety check alert list.

2 SECTION 1.23. Subchapter D, Chapter 261, Family Code, is  
3 amended by adding Section 261.3031 to read as follows:

4 Sec. 261.3031. FAILURE TO COOPERATE WITH INVESTIGATION;  
5 DEPARTMENT RESPONSE. If a parent or other person refuses to  
6 cooperate with the department's investigation of the alleged abuse  
7 or neglect of a child and the refusal poses a risk to the child's  
8 safety, the department shall seek assistance from the appropriate  
9 county attorney or district attorney or criminal district attorney  
10 with responsibility for representing the department as provided by  
11 Section 264.009 to obtain a court order as described by Section  
12 261.303.

13 SECTION 1.24. Subchapter D, Chapter 261, Family Code, is  
14 amended by adding Section 261.3032 to read as follows:

15 Sec. 261.3032. INTERFERENCE WITH INVESTIGATION; CRIMINAL  
16 PENALTY. (a) A person commits an offense if, with the intent to  
17 interfere with the department's investigation of a report of abuse  
18 or neglect of a child, the person relocates the person's residence,  
19 either temporarily or permanently, without notifying the  
20 department of the address of the person's new residence or conceals  
21 the child and the person's relocation or concealment interferes  
22 with the department's investigation.

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

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

27 SECTION 1.25. (a) Section 261.307, Family Code, is amended

1 to read as follows:

2           Sec. 261.307. INFORMATION RELATING TO INVESTIGATION  
3 PROCEDURE.    (a) As soon as possible after initiating an  
4 investigation of a parent or other person having legal custody of a  
5 child, the department shall provide to the person:

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

7                   (A) is brief and easily understood;

8                   (B) is written in a language that the person  
9 understands, or if the person is illiterate, is read to the person  
10 in a language that the person understands; and

11                   (C) contains the following information:

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

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

18                           (b) [~~(B)~~] an explanation that the law  
19 requires the department to refer all reports of alleged child abuse  
20 or neglect to a law enforcement agency for a separate determination  
21 of whether a criminal violation occurred;

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

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

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

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

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

9                    (2) if the department determines that removal of the  
10 child may be warranted, a proposed child placement resources form  
11 that:

12                    (A) instructs the parent or other person having  
13 legal custody of the child to:

14                    (i) complete and return the form to the  
15 department or agency; and

16                    (ii) identify in the form three individuals  
17 who could be relative caregivers or designated caregivers, as those  
18 terms are defined by Section 264.751; and

19                    (B) informs the parent or other person of a  
20 location that is available to the parent or other person to submit  
21 the information in the form 24 hours a day either in person or by  
22 facsimile machine or e-mail; and

23                    (3) an informational manual required by Section  
24 261.3071.

25                    (b) The child placement resources form described by  
26 Subsection (a)(2) must include information on the periods of time  
27 by which the department must complete a background check.



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

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

11 SECTION 1.26. Subchapter D, Chapter 261, Family Code, is  
12 amended by adding Section 261.3071 to read as follows:

13 Sec. 261.3071. INFORMATIONAL MANUALS. (a) In this  
14 section, "relative caregiver" and "designated caregiver" have the  
15 meanings assigned those terms by Section 264.751.

16 (b) The department shall develop and publish informational  
17 manuals that provide information for:

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

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

22 (c) Information provided in the manuals must be in both  
23 English and Spanish and must include, as appropriate:

24 (1) useful indexes of information such as telephone  
25 numbers;

26 (2) the information required to be provided under  
27 Section 261.307(a)(1);

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

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

5           SECTION 1.27. Section 261.310, Family Code, is amended by  
6 amending Subsections (a), (c), and (d) and adding Subsection (e) to  
7 read as follows:

8           (a) The department shall by rule develop and adopt  
9 [~~voluntary~~] standards for persons who investigate suspected child  
10 abuse or neglect at the state or local level. The standards shall  
11 encourage professionalism and consistency in the investigation of  
12 suspected child abuse or neglect.

13           (c) The professional training curriculum developed under  
14 this section shall include:

15           (1) information concerning:

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

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

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

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

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

26           (3) training regarding applicable federal law,  
27 including the Adoption and Safe Families Act of 1997 (Pub. L. No.

1 105-89) and the Child Abuse Prevention and Treatment Act (Pub. L.  
2 No. 93-247) and its subsequent amendments by the Keeping Children  
3 and Families Safe Act of 2003 (Pub. L. No. 108-36).

4 (d) The standards shall [~~recommend~~]:

5 (1) recommend that videotaped and audiotaped  
6 interviews [~~with a suspected victim~~] be uninterrupted;

7 (2) recommend a maximum number of interviews with and  
8 examinations of a suspected victim;

9 (3) provide procedures to preserve evidence,  
10 including the original recordings of the intake telephone calls,  
11 original notes, videotapes, and audiotapes, for one year; and

12 (4) provide that an investigator of suspected child  
13 abuse or neglect make a reasonable effort to locate and inform each  
14 parent of a child of any report of abuse or neglect relating to the  
15 child.

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

20 SECTION 1.28. Subchapter D, Chapter 261, Family Code, is  
21 amended by adding Section 261.3101 to read as follows:

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

24 (1) employ or contract with medical and law  
25 enforcement professionals who shall be strategically placed  
26 throughout the state to provide forensic investigation support and  
27 to assist caseworkers with assessment decisions and intervention

1 activities;

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

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

8 SECTION 1.29. Section 261.3125, Family Code, is amended to  
9 read as follows:

10 Sec. 261.3125. CHILD SAFETY SPECIALISTS [~~INVESTIGATIONS~~  
11 ~~COORDINATOR~~]. (a) The department shall employ in each of the  
12 department's administrative regions [~~region of the department for~~  
13 ~~child protective services~~] at least one child safety specialist  
14 [~~protective services investigations coordinator~~]. The job  
15 responsibilities of the child safety specialist [~~investigations~~  
16 ~~coordinator~~] must focus [~~only~~] on child abuse and neglect  
17 investigation issues, including reports of child abuse required by  
18 Section 261.101, to achieve a greater compliance with that section,  
19 and on assessing and improving the effectiveness of the department  
20 in providing for the protection of children in the region.

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

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

27 (2) review and evaluate [~~monitor~~] cases in which there

1 have been multiple referrals to the department of child abuse or  
2 neglect involving the same family, child, or person alleged to have  
3 committed the abuse or neglect; and

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

7 SECTION 1.30. Subchapter D, Chapter 261, Family Code, is  
8 amended by adding Section 261.3126 to read as follows:

9 Sec. 261.3126. COLOCATION OF INVESTIGATORS. (a) In each  
10 county, to the extent possible, the department and the local law  
11 enforcement agencies that investigate child abuse in the county  
12 shall collocate in the same offices investigators from the  
13 department and the law enforcement agencies to improve the  
14 efficiency of child abuse investigations. With approval of the  
15 local children's advocacy center and its partner agencies, in each  
16 county in which a children's advocacy center established under  
17 Section 264.402 is located, the department shall attempt to locate  
18 investigators from the department and county and municipal law  
19 enforcement agencies at the center.

20 (b) A law enforcement agency is not required to comply with  
21 the collocation requirements of this section if the law enforcement  
22 agency does not have a full-time peace officer solely assigned to  
23 investigate reports of child abuse and neglect.

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

27 SECTION 1.31. Subchapter E, Chapter 261, Family Code, is

1 amended by adding Section 261.410 to read as follows:

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

4 (1) "Physical abuse" means:

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

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

13 (2) "Sexual abuse" means:

14 (A) sexual conduct harmful to a child's mental,  
15 emotional, or physical welfare; or

16 (B) failure to make a reasonable effort to  
17 prevent sexual conduct harmful to a child.

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

22 (c) Using information received under Subsection (b), the  
23 agency that operates, licenses, certifies, or registers a facility  
24 shall, subject to the availability of funds, compile a report that  
25 includes information:

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

- 1           (2) identifying the residential child-care facility;  
2           (3) regarding the date each allegation of abuse was  
3 made;  
4           (4) regarding the date each investigation was started  
5 and concluded;  
6           (5) regarding the findings and results of each  
7 investigation; and  
8           (6) regarding the number of children involved in each  
9 incident investigated.

10           SECTION 1.32. Subchapter B, Chapter 262, Family Code, is  
11 amended by adding Section 262.1041 to read as follows:

12           Sec. 262.1041. RELEASE OF CHILD BY LAW ENFORCEMENT OR  
13 JUVENILE PROBATION OFFICER. (a) A law enforcement or juvenile  
14 probation officer who takes possession of a child under this  
15 chapter may release the child to:

16           (1) a child-placing agency licensed by the Department  
17 of Family and Protective Services under Chapter 42, Human Resources  
18 Code, if the agency is authorized by the department to take  
19 possession of the child;

20           (2) the Department of Family and Protective Services;  
21 or

22           (3) any other person authorized by law to take  
23 possession of the child.

24           (b) A child-placing agency or other authorized person who  
25 takes possession of a child under this section shall:

26           (1) immediately notify the Department of Family and  
27 Protective Services that the agency or other authorized person has

1 taken possession of the child; and

2 (2) with the assistance of the law enforcement or  
3 juvenile probation officer who releases the child to the agency or  
4 other authorized person, complete a form prescribed by the  
5 Department of Family and Protective Services that contains basic  
6 information regarding the child and the circumstances under which  
7 the officer took possession of the child and promptly submit the  
8 completed form to the department.

9 SECTION 1.33. Subchapter B, Chapter 262, Family Code, is  
10 amended by adding Section 262.114 to read as follows:

11 Sec. 262.114. EVALUATION OF IDENTIFIED RELATIVES AND OTHER  
12 DESIGNATED INDIVIDUALS; PLACEMENT. (a) Before a full adversary  
13 hearing under Subchapter C, the Department of Family and Protective  
14 Services must perform a background and criminal history check of  
15 the relatives or other designated individuals identified as a  
16 potential relative or designated caregiver, as defined by Section  
17 264.751, on the proposed child placement resources form provided  
18 under Section 261.307. The department shall evaluate each person  
19 listed on the form to determine the relative or other designated  
20 individual who would be the most appropriate substitute caregiver  
21 for the child and must complete a home study of the most appropriate  
22 substitute caregiver, if any, before the full adversary hearing.  
23 Until the department identifies a relative or other designated  
24 individual qualified to be a substitute caregiver, the department  
25 must continue to explore substitute caregiver options. The time  
26 frames in this subsection do not apply to a relative or other  
27 designated individual located in another state.



1        (b) The department may place a child with a relative or  
2 other designated individual identified on the proposed child  
3 placement resources form if the department determines that the  
4 placement is in the best interest of the child. The department may  
5 place the child with the relative or designated individual before  
6 conducting the background and criminal history check or home study  
7 required under Subsection (a). The department shall provide a copy  
8 of an informational manual required under Section 261.3071 to the  
9 relative or other designated caregiver at the time of the child's  
10 placement.

11        SECTION 1.34. (a) Subsection (c), Section 262.201, Family  
12 Code, is amended to read as follows:

13        (c) If the court finds sufficient evidence to satisfy a  
14 person of ordinary prudence and caution that there is a continuing  
15 danger to the physical health or safety of the child and for the  
16 child to remain in the home is contrary to the welfare of the child,  
17 the court shall issue an appropriate temporary order under Chapter  
18 105. The court shall require each parent, alleged father, or  
19 relative of the child before the court to submit the proposed child  
20 placement resources form provided under Section 261.307, if the  
21 form has not been previously provided, and provide the Department  
22 of Family and Protective [~~and Regulatory~~] Services with information  
23 necessary to locate any other absent parent, alleged father, or  
24 relative of the child. The court shall inform each parent, alleged  
25 father, or relative of the child before the court that the person's  
26 failure to submit the proposed child placement resources form will  
27 not delay any court proceedings relating to the child. The court

1 shall inform each parent in open court that parental and custodial  
2 rights and duties may be subject to restriction or to termination  
3 unless the parent or parents are willing and able to provide the  
4 child with a safe environment. If the court finds that the child  
5 requires protection from family violence by a member of the child's  
6 family or household, the court shall render a protective order  
7 under Title 4 for the child. In this subsection, "family violence"  
8 has the meaning assigned by Section 71.004.

9 (b) The change in law made by this section to Subsection  
10 (c), Section 262.201, Family Code, applies only to a full adversary  
11 hearing that occurs on or after November 1, 2005. A full adversary  
12 hearing that occurs before that date is governed by the law as it  
13 existed before amendment by this section, and the former law is  
14 continued in effect for that purpose.

15 SECTION 1.35. Subsection (b), Section 262.2015, Family  
16 Code, is amended to read as follows:

17 (b) The court may find under Subsection (a) that a parent  
18 has subjected the child to aggravated circumstances if:

19 (1) the parent abandoned the child without  
20 identification or a means for identifying the child;

21 (2) the child is a victim of serious bodily injury or  
22 sexual abuse inflicted by the parent or by another person with the  
23 parent's consent;

24 (3) the parent has engaged in conduct against the  
25 child that would constitute an offense under the following  
26 provisions of the Penal Code:

27 (A) Section 19.02 (murder);

- 1 (B) Section 19.03 (capital murder);
- 2 (C) Section 19.04 (manslaughter);
- 3 (D) Section 21.11 (indecent with a child);
- 4 (E) Section 22.011 (sexual assault);
- 5 (F) Section 22.02 (aggravated assault);
- 6 (G) Section 22.021 (aggravated sexual assault);
- 7 (H) Section 22.04 (injury to a child, elderly
- 8 individual, or disabled individual);
- 9 (I) Section 22.041 (abandoning or endangering
- 10 child);
- 11 (J) Section 25.02 (prohibited sexual conduct);
- 12 (K) Section 43.25 (sexual performance by a
- 13 child); or
- 14 (L) Section 43.26 (possession or promotion of
- 15 child pornography);

16 (4) the parent voluntarily left the child alone or in  
17 the possession of another person not the parent of the child for at  
18 least six months without expressing an intent to return and without  
19 providing adequate support for the child;

20 (5) the parent's parental rights with regard to  
21 another child have been involuntarily terminated based on a finding  
22 that the parent's conduct violated Section 161.001(1)(D) or (E) or  
23 a substantially equivalent provision of another state's law; ~~or~~

24 (6) the parent has been convicted for:

25 (A) the murder of another child of the parent and  
26 the offense would have been an offense under 18 U.S.C. Section  
27 1111(a) if the offense had occurred in the special maritime or

1 territorial jurisdiction of the United States;

2 (B) the voluntary manslaughter of another child  
3 of the parent and the offense would have been an offense under 18  
4 U.S.C. Section 1112(a) if the offense had occurred in the special  
5 maritime or territorial jurisdiction of the United States;

6 (C) aiding or abetting, attempting, conspiring,  
7 or soliciting an offense under Subdivision (A) or (B); or

8 (D) the felony assault of the child or another  
9 child of the parent that resulted in serious bodily injury to the  
10 child or another child of the parent; or

11 (7) the parent's parental rights with regard to two  
12 other children have been involuntarily terminated.

13 SECTION 1.36. Subdivision (1), Subsection (a), Section  
14 263.001, Family Code, is amended to read as follows:

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

17 SECTION 1.37. (a) Section 263.201, Family Code, is amended  
18 by adding Subsection (c) to read as follows:

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

23 (b) The change in law made by this section to Section  
24 263.201, Family Code, applies only to a status hearing that occurs  
25 on or after November 1, 2005. A status hearing that occurs before  
26 that date is governed by the law as it existed before amendment by  
27 this section, and the former law is continued in effect for that

1 purpose.

2 SECTION 1.38. (a) Section 263.102, Family Code, is amended  
3 by amending Subsection (a) and adding Subsections (d) and (e) to  
4 read as follows:

5 (a) The service plan must:

6 (1) be specific;

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

9 (3) be prepared by the department or other agency in  
10 conference with the child's parents;

11 (4) state appropriate deadlines;

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

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

14 (B) termination of parental rights and placement  
15 of the child for adoption; or

16 (C) because of the child's special needs or  
17 exceptional circumstances, continuation of the child's care out of  
18 the child's home;

19 (6) state steps that are necessary to:

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

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

25 (C) otherwise provide a permanent safe placement  
26 for the child;

27 (7) state the actions and responsibilities that are

1 necessary for the child's parents to take to achieve the plan goal  
2 during the period of the service plan and the assistance to be  
3 provided to the parents by the department or other authorized  
4 agency toward meeting that goal;

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

8 (9) state the actions and responsibilities that are  
9 necessary for the child's parents to take to ensure that the child  
10 attends school and maintains or improves the child's academic  
11 compliance;

12 (10) state the name of the person with the department  
13 or other agency whom the child's parents may contact for  
14 information relating to the child if other than the person  
15 preparing the plan; and

16 (11) [~~9~~] prescribe any other term or condition that  
17 the department or other agency determines to be necessary to the  
18 service plan's success.

19 (d) The department or other authorized entity must write the  
20 service plan in a manner that is clear and understandable to the  
21 parent in order to facilitate the parent's ability to follow the  
22 requirements of the service plan.

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

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

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

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

10           (c) The court shall advise the parties that progress under  
11 the service plan will be reviewed at all subsequent hearings,  
12 including a review of whether the parties have acquired or learned  
13 any specific skills or knowledge stated in the service plan.

14           (c) The changes in law made by Section 263.102 and  
15 Subsection (c), Section 263.202, Family Code, as amended by this  
16 section, apply only to a child placed in the custody of the  
17 Department of Family and Protective Services on or after the  
18 effective date of this section. A child placed in the custody of  
19 the department before the effective date of this section is  
20 governed by the law in effect on the date the child was placed in the  
21 department's custody, and the former law is continued in effect for  
22 that purpose.

23           SECTION 1.39. Section 263.202, Family Code, is amended by  
24 amending Subsection (b) and adding Subsection (e) to read as  
25 follows:

26           (b) Except as provided by Subsection (e), a [A] status  
27 hearing shall be limited to matters related to the contents and

1 execution of the service plan filed with the court. The court shall  
2 review the service plan that the department or other agency filed  
3 under this chapter for reasonableness, accuracy, and compliance  
4 with requirements of court orders and make findings as to whether:

5 (1) a plan that has the goal of returning the child to  
6 the child's parents adequately ensures that reasonable efforts are  
7 made to enable the child's parents to provide a safe environment for  
8 the child; and

9 (2) the child's parents have reviewed and understand  
10 the service plan and have been advised that unless the parents are  
11 willing and able to provide the child with a safe environment, even  
12 with the assistance of a service plan, within the reasonable period  
13 of time specified in the plan, the parents' parental and custodial  
14 duties and rights may be subject to restriction or to termination  
15 under this code or the child may not be returned to the parents.

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

19 SECTION 1.40. Subsection (b), Section 263.401, Family Code,  
20 is amended to read as follows:

21 (b) The court may not retain the suit on the court's docket  
22 after the time described by Subsection (a) unless the court finds  
23 that extraordinary circumstances necessitate the child remaining  
24 in the temporary managing conservatorship of the department and  
25 that continuing the appointment of the department as temporary  
26 managing conservator is in the best interest of the child. If the  
27 court makes those findings, the court may retain the suit on the



1 court's docket for a period not to exceed 180 days after the time  
2 described by Subsection (a) [~~, if the court finds that continuing~~  
3 ~~the appointment of the department as temporary managing conservator~~  
4 ~~is in the best interest of the child~~]. If the court retains the suit  
5 on the court's docket, the court shall render an order in which the  
6 court:

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

10 (2) makes further temporary orders for the safety and  
11 welfare of the child as necessary to avoid further delay in  
12 resolving the suit; and

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

16 SECTION 1.41. (a) Subsection (c), Section 263.502, Family  
17 Code, is amended to read as follows:

18 (c) The placement review report must:

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

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

25 (3) contain a discharge plan for a child who is at  
26 least 16 years of age that identifies [~~identify~~] the services and  
27 specific tasks that are needed to assist the [~~a~~] child [~~who is at~~

1 ~~least 16 years of age~~ in making the transition from substitute care  
2 to adult [~~independent~~] living and describes the services that are  
3 available through the Preparation for Adult Living Program operated  
4 by the department [~~if the services are available in the community~~];

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

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

9 (6) [~~(5)~~] describe the efforts of the department or  
10 authorized agency to place the child for adoption if parental  
11 rights to the child have been terminated and the child is eligible  
12 for adoption, including efforts to provide adoption promotion and  
13 support services as defined by 42 U.S.C. Section 629a and other  
14 efforts consistent with the federal Adoption and Safe Families Act  
15 of 1997 (Pub. L. No. 105-89).

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

21 SECTION 1.42. Section 264.001, Family Code, is amended to  
22 read as follows:

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

24 (1) "Department" [~~"department"~~] means the Department  
25 of Family and Protective [~~and Regulatory~~] Services.

26 (2) "Commission" means the Health and Human Services  
27 Commission.

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

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

5           SECTION 1.43. Subchapter A, Chapter 264, Family Code, is  
6 amended by adding Section 264.0091 to read as follows:

7           Sec. 264.0091. USE OF TELECONFERENCING AND  
8 VIDEOCONFERENCING TECHNOLOGY. Subject to the availability of  
9 funds, the department, in cooperation with district and county  
10 courts, shall expand the use of teleconferencing and  
11 videoconferencing to facilitate participation by medical experts  
12 and other individuals in court proceedings.

13           SECTION 1.44. Subchapter A, Chapter 264, Family Code, is  
14 amended by adding Section 264.013 to read as follows:

15           Sec. 264.013. EXCHANGE OF INFORMATION WITH OTHER STATES.  
16 Subject to the availability of funds, the department shall enter  
17 into agreements with other states to allow for the exchange of  
18 information relating to a child for whom the department is or was  
19 the managing conservator. The information may include the child's  
20 health passport and education passport.

21           SECTION 1.45. Section 264.101, Family Code, is amended by  
22 adding Subsection (d-1) to read as follows:

23           (d-1) The executive commissioner may adopt rules that  
24 prescribe the maximum amount of state money that a residential  
25 child-care facility may spend on nondirect residential services,  
26 including administrative services. The commission shall recover  
27 the money that exceeds the maximum amount established under this

1 subsection.

2 SECTION 1.46. Section 264.106, Family Code, is amended to  
3 read as follows:

4 Sec. 264.106. REQUIRED CONTRACTS FOR SUBSTITUTE CARE AND  
5 CASE MANAGEMENT SERVICES. (a) In this section:

6 (1) "Case management services" means the provision of  
7 case management services to a child for whom the department has been  
8 appointed temporary or permanent managing conservator, including  
9 caseworker-child visits, family visits, the convening of family  
10 group conferences, the development and revision of the case plan,  
11 the coordination and monitoring of services needed by the child and  
12 family, and the assumption of court-related duties, including  
13 preparing court reports, attending judicial hearings and  
14 permanency hearings, and ensuring that the child is progressing  
15 toward permanency within state and federal mandates.

16 (2) "Independent administrator" means an independent  
17 agency selected through a competitive procurement process to:

18 (A) secure, coordinate, and manage substitute  
19 care services and case management services in a geographically  
20 designated area of the state; and

21 (B) ensure continuity of care for a child  
22 referred to the administrator by the department and the child's  
23 family from the day a child enters the child protective services  
24 system until the child leaves the system.

25 (3) "Permanency services" means services, other than  
26 family-based safety services, provided to secure a child's safety,  
27 permanency, and well-being, including substitute care services,

1 family reunification services, adoption and postadoption services,  
2 preparation for adult living services, and case management  
3 services.

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

7 (5) "Substitute care services" means services  
8 provided to or for children in substitute care and their families,  
9 including the recruitment, training, and management of foster  
10 parents, the recruitment of adoptive families, and the facilitation  
11 of the adoption process, family preservation, independent living,  
12 emergency shelter, residential group care, foster care,  
13 therapeutic foster care, and post-placement supervision, including  
14 relative placement. The term does not include the regulation of  
15 facilities under Subchapter C, Chapter 42, Human Resources Code.

16 (b) The department shall, in accordance with Section  
17 45.004, Human Resources Code:

18 (1) assess the need for substitute care and case  
19 management services throughout the state; ~~and~~

20 (2) either contract directly with private agencies as  
21 part of regional community-centered networks for the provision of  
22 all necessary substitute care and case management ~~[substitute care~~  
23 ~~providers only to the extent necessary to meet the need for those]~~  
24 services or use an independent administrator to contract for those  
25 services;

26 (3) contract with an independent administrator, if  
27 cost beneficial, to coordinate and manage all services needed for

1 children in the temporary or permanent managing conservatorship of  
2 the department in a designated geographic area;

3 (4) monitor the quality of services for which the  
4 department and each independent administrator contract under this  
5 section; and

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

10 (c) An independent administrator may not:

11 (1) directly provide substitute care services; or

12 (2) be governed by a board that has a member who has a  
13 financial interest in a substitute care or case management provider  
14 with whom the independent administrator subcontracts.

15 (d) Administrative services to be provided by an  
16 independent administrator include:

17 (1) recruiting and subcontracting with  
18 community-based substitute care and case management providers to  
19 ensure a full array of services in defined geographic areas;

20 (2) managing placements and making referrals for  
21 placement based on department-approved protocols;

22 (3) monitoring services delivered by subcontractors;

23 (4) providing training and technical assistance to  
24 contract providers;

25 (5) maintaining data systems that support tracking and  
26 reporting key performance and outcome data; and

27 (6) ensuring accountability for achieving defined

1 client and system outcomes.

2 (e) [~~(b)~~ Before contracting with a substitute care  
3 provider, the department shall determine whether:

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

6 ~~[(2) the appropriate public school district has  
7 sufficient resources to support children placed under the  
8 provider's care if the children will attend public school.~~

9 ~~[(c)]~~ In addition to the requirements of Section 40.058(b),  
10 Human Resources Code, a contract with an independent administrator  
11 ~~[a substitute care provider]~~ must include provisions that:

12 (1) enable the department to monitor the effectiveness  
13 of the ~~[provider's]~~ services; ~~and]~~

14 (2) specify performance outcomes;

15 (3) authorize the department to terminate the contract  
16 or impose sanctions for a violation of a provision of the contract  
17 that specifies performance criteria;

18 (4) ensure that an independent administrator may not  
19 refuse to accept a client who is referred for services or reject a  
20 client who is receiving services unless the department has reviewed  
21 the independent administrator's decision and approved the decision  
22 in writing;

23 (5) authorize the department, an agent of the  
24 department, and the state auditor to inspect all books, records,  
25 and files maintained by an independent administrator relating to  
26 the contract; and

27 (6) the department determines are necessary to ensure

1 accountability for the delivery of services and for the expenditure  
2 of public funds.

3 (f) A contract with an independent administrator for  
4 substitute care and case management services under Subsection  
5 (b)(2) must include department-approved provisions that:

6 (1) enable the independent administrator and the  
7 department to:

8 (A) monitor the effectiveness of substitute care  
9 and case management services; and

10 (B) specify performance standards and authorize  
11 termination of the contract for cause;

12 (2) describe how performance is linked to  
13 reimbursement amounts or schedules to provide incentives for  
14 desired results;

15 (3) require all independent administrators and  
16 private contractors to disclose to the department any information  
17 that may indicate an actual or potential conflict of interest with  
18 the commission, the department, or another health and human  
19 services agency, including information regarding actual or  
20 potential related-party transactions, relationships, interests, or  
21 business history, and any other factor that may indicate an actual  
22 or potential conflict of interest;

23 (4) authorize the independent administrator, an agent  
24 of the independent administrator, the department, an agent of the  
25 department, and the state auditor to inspect all books, records,  
26 and files maintained by a contractor relating to the contract; and

27 (5) the department determines are necessary to ensure



1 accountability for the delivery of services and for the expenditure  
2 of public funds.

3 (g) [~~(d)~~] In determining whether to contract with a  
4 substitute care provider or an independent administrator, the  
5 department shall consider the provider's or administrator's  
6 performance under any previous contract [~~for substitute care~~  
7 ~~services~~] between the department and the provider or administrator.

8 (h) A contract under this section does not affect the rights  
9 and duties of the department in the department's capacity as the  
10 temporary or permanent managing conservator of a child.

11 (i) Except as provided by Subsections (j) and (k) and  
12 notwithstanding any other law, on and after September 1, 2011, the  
13 department may not directly provide substitute care and case  
14 management services for children for whom the department has been  
15 appointed temporary or permanent managing conservator.

16 (j) On and after September 1, 2011, the department may  
17 provide substitute care and case management services in an  
18 emergency. The executive commissioner shall adopt rules describing  
19 the circumstances in which the department may provide those  
20 services.

21 (k) The department may provide substitute care and case  
22 management services as a provider of last resort in any region of  
23 the state in which the department or an independent administrator  
24 contracting with the department is unable to contract with a  
25 private agency to provide those services

26 [~~(e) In this section, "substitute care provider" means a~~  
27 ~~person who provides residential care for children for 24 hours a~~

1 ~~day, including:~~

2 ~~(1) a child-care institution, as defined by Section~~  
3 ~~42.002, Human Resources Code;~~

4 ~~(2) a child-placing agency, as defined by Section~~  
5 ~~42.002, Human Resources Code;~~

6 ~~(3) a foster group home or foster family home, as~~  
7 ~~defined by Section 42.002, Human Resources Code; and~~

8 ~~(4) an agency group home or agency home, as defined by~~  
9 ~~Section 42.002, Human Resources Code, other than an agency group~~  
10 ~~home, agency home, or a foster home verified or certified by the~~  
11 ~~department].~~

12 SECTION 1.47. Subchapter B, Chapter 264, Family Code, is  
13 amended by adding Sections 264.1062 and 264.1063 to read as  
14 follows:

15 Sec. 264.1062. EVALUATION OF INDEPENDENT ADMINISTRATORS.

16 The department shall develop and implement a comprehensive  
17 multidisciplinary team to monitor and evaluate the performance of  
18 independent administrators. The team must consist of specialized  
19 staff who can enable the department to measure critical dimensions  
20 of community-based organization performance, obtained through the  
21 quality assurance functions of the independent administrator,  
22 including:

23     (1) achievement of client and system outcomes;

24     (2) compliance with contractual terms and conditions;

25 and

26     (3) any history of the community-based organization's  
27 noncompliance with the department's licensing standards.

1       Sec. 264.1063. MONITORING PERFORMANCE OF SUBSTITUTE CARE  
2 AND CASE MANAGEMENT PROVIDERS. (a) The department, in  
3 consultation with private entities under contract with either an  
4 independent administrator or the department to provide substitute  
5 care or case management services, shall establish a quality  
6 assurance program that uses comprehensive, multitiered assurance  
7 and improvement systems based, subject to the availability of  
8 funds, on real-time data to evaluate performance.

9       (b) The contract performance outcomes specified in a  
10 contract under Section 264.106 must be consistent with the fiscal  
11 goals of privatizing substitute care and case management services  
12 and must be within the contractor's authority to deliver. The  
13 contract must clearly define the manner in which the substitute  
14 care or case management provider's performance will be measured and  
15 identify the information sources the department and, if applicable,  
16 the independent administrator will use to evaluate the performance.

17       SECTION 1.48. Section 264.107, Family Code, is amended by  
18 adding Subsections (c) through (f) to read as follows:

19       (c) The contract between the department and an independent  
20 administrator or other authorized entity must require, not later  
21 than September 1, 2009, the use of real-time technology in the  
22 independent administrator's or other authorized entity's placement  
23 system to screen possible placement options for a child and match  
24 the child's needs with the most qualified providers with vacancies.

25       (d) The department shall institute a quality assurance  
26 system in monitoring the independent administrators or other  
27 authorized entities to ensure that placement decisions are reliable

1 and are made in a consistent manner.

2 (e) In making placement decisions, an independent  
3 administrator or other authorized entity shall use clinical  
4 protocols to match a child to the most appropriate placement  
5 resource.

6 (f) The department may create a regional advisory council in  
7 a region to assist the department and independent administrator or  
8 other authorized entity in:

9 (1) assessing the need for resources in the region;

10 and

11 (2) locating substitute care services in the region  
12 for hard-to-place children.

13 SECTION 1.49. Section 264.1075, Family Code, is amended to  
14 read as follows:

15 Sec. 264.1075. ASSESSING NEEDS OF CHILD [~~USE OF ASSESSMENT~~  
16 ~~SERVICES~~]. (a) On removing a child from the child's home [~~Before~~  
17 ~~placing a child in substitute care~~], the department shall use  
18 assessment services provided by a child-care facility, a [~~or~~]  
19 child-placing agency, or the child's medical home during the  
20 initial substitute care placement. The assessment may be used [~~in~~  
21 ~~accordance with Section 42.0425, Human Resources Code,~~] to  
22 determine the most appropriate substitute care placement for the  
23 child, if needed.

24 (b) As soon as possible after a child begins receiving  
25 foster care under this subchapter, the department shall assess  
26 whether the child has a developmental disability or mental  
27 retardation. The commission shall establish the procedures that

1 the department must use in making an assessment under this  
2 subsection. The procedures may include screening or participation  
3 by:

4 (1) a person who has experience in childhood  
5 developmental disabilities or mental retardation;

6 (2) a local mental retardation authority; or

7 (3) a provider in a county with a local child welfare  
8 board.

9 SECTION 1.50. (a) Subchapter B, Chapter 264, Family Code,  
10 is amended by adding Sections 264.116, 264.117, and 264.118 to read  
11 as follows:

12 Sec. 264.116. TEXAS FOSTER GRANDPARENT MENTORS. (a) The  
13 department shall make the active recruitment and inclusion of  
14 senior citizens a priority in ongoing mentoring initiatives.

15 (b) An individual who volunteers as a mentor is subject to  
16 state and national criminal background checks in accordance with  
17 Sections 411.087 and 411.114, Government Code.

18 (c) The department shall require foster parents or  
19 employees of residential child-care facilities to provide  
20 appropriate supervision over individuals who serve as mentors  
21 during their participation in the mentoring initiative.

22 (d) Chapter 2109, Government Code, applies to the mentoring  
23 initiative described by this section.

24 Sec. 264.117. NOTICE TO ATTORNEY AD LITEM. (a) The  
25 department shall notify the attorney ad litem for a child in the  
26 conservatorship of the department about each event involving the  
27 child that the department reports in the child's case file.

1       (b) The department shall give a child's attorney ad litem  
2 written notice at least 48 hours before the date the department  
3 changes the child's residential care provider. The department may  
4 change the child's residential care provider without notice if the  
5 department determines that an immediate change is necessary to  
6 protect the child.

7       Sec. 264.118. ANNUAL SURVEY. (a) The department shall  
8 conduct an annual random survey of a sample of children from each  
9 region of the state who are at least 14 years of age and who receive  
10 substitute care services. The survey must include questions  
11 regarding:

12           (1) the quality of the substitute care services  
13 provided to the child;

14           (2) any improvements that could be made to better  
15 support the child; and

16           (3) any other factor that the department considers  
17 relevant to enable the department to identify potential program  
18 enhancements.

19       (b) The identity of each child participating in a department  
20 survey is confidential and not subject to public disclosure under  
21 Chapter 552, Government Code. The department shall adopt  
22 procedures to ensure that the identity of each child participating  
23 in a department survey remains confidential.

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

27       SECTION 1.51. 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 1.52. 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 1.53. 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 1.54. (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 the presiding officer of each house and senate standing committee  
16 having jurisdiction over child protective services, and the  
17 Parental Advisory Committee created under Section 40.073, Human  
18 Resources Code, as added by this Act.

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

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

27 (2) develop and implement a remediation plan to

1 prevent racial or ethnic disparities not justified by other  
2 external factors from affecting the decision to initiate  
3 enforcement actions; and

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

9 (A) the evaluation of policies and procedures;  
10 and

11 (B) the remediation plan.

12 SECTION 1.55. Subsection (c), Section 264.203, Family Code,  
13 is amended to read as follows:

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

19 SECTION 1.56. Subsection (b), Section 264.502, Family Code,  
20 is amended to read as follows:

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

24 (1) a criminal prosecutor involved in prosecuting  
25 crimes against children;

26 (2) a sheriff;

27 (3) a justice of the peace;

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

15 SECTION 1.57. Section 264.503, Family Code, is amended by  
16 amending Subsections (b) through (f) and adding Subsections (d-1)  
17 and (g) to read as follows:

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

21 (c) The department shall:

22 (1) recognize the creation and participation of review  
23 teams; and

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

27 ~~[(3) assist the committee in developing model~~

1 ~~protocols for:~~

2 ~~[(A) the reporting and investigating of child~~  
3 ~~fatalities for law enforcement agencies, child protective~~  
4 ~~services, justices of the peace and medical examiners, and other~~  
5 ~~professionals involved in the investigations of child deaths,~~

6 ~~[(B) the collection of data regarding child~~  
7 ~~deaths; and~~

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

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

11 (d) The Department of State Health Services ~~[department]~~  
12 shall:

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

15 (2) assist the committee in developing model protocols  
16 for:

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

21 (B) the collection of data regarding child  
22 deaths; and

23 (C) the operation of the review teams;

24 (3) develop and implement procedures necessary for the  
25 operation of the committee; and

26 (4) promote education of the public regarding the  
27 incidence and causes of child deaths, the public role in preventing

1 child deaths, and specific steps the public can undertake to  
2 prevent child deaths.

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

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

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

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

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

1 department shall submit a written response on the compilation from  
2 the previous year to the committee, governor, lieutenant governor,  
3 and speaker of the house of representatives describing which of the  
4 committee's recommendations regarding the operation of the child  
5 protective services system the department will implement and the  
6 methods of implementation.

7 (g) The committee shall perform the functions and duties  
8 required of a citizen review panel under 42 U.S.C. Section  
9 5106a(c)(4)(A).

10 SECTION 1.58. Subsection (c), Section 264.504, Family Code,  
11 is amended to read as follows:

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

19 SECTION 1.59. Subsection (c), Section 264.505, Family Code,  
20 is amended to read as follows:

21 (c) A review team may include:

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

24 (2) a sheriff;

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

26 (4) a police chief;

27 (5) a pediatrician experienced in diagnosing and



1 treating child abuse and neglect;

2 (6) a child educator;

3 (7) a child mental health provider;

4 (8) a public health professional;

5 (9) a child protective services specialist;

6 (10) a sudden infant death syndrome family service  
7 provider;

8 (11) a neonatologist;

9 (12) a child advocate; ~~and~~

10 (13) a chief juvenile probation officer; and

11 (14) a child abuse prevention specialist.

12 SECTION 1.60. Subsection (b), Section 264.509, Family Code,  
13 is amended to read as follows:

14 (b) On request of the presiding officer of a review team,  
15 the custodian of the relevant information and records relating to a  
16 deceased child shall provide those records to the review team at no  
17 cost to the review team.

18 SECTION 1.61. Section 264.602, Family Code, is amended by  
19 adding Subsection (e) to read as follows:

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

1 program.

2 SECTION 1.62. (a) Chapter 264, Family Code, is amended by  
3 adding Subchapter I to read as follows:

4 SUBCHAPTER I. RELATIVE AND OTHER DESIGNATED CAREGIVER PLACEMENT

5 PROGRAM

6 Sec. 264.751. DEFINITIONS. In this subchapter:

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

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

14 (B) is subsequently appointed permanent managing  
15 conservator of the child after providing the care described by  
16 Paragraph (A).

17 (2) "Relative" means a person related to a child by  
18 consanguinity as determined under Section 573.022, Government  
19 Code.

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

21 (A) provides substitute care for a child for whom  
22 the department has been appointed managing conservator, but who is  
23 not licensed or certified to operate a foster home, foster group  
24 home, agency foster home, or agency foster group home under Chapter  
25 42, Human Resources Code; or

26 (B) is subsequently appointed permanent managing  
27 conservator of the child after providing the care described by

1 Paragraph (A).

2 Sec. 264.752. RELATIVE AND OTHER DESIGNATED CAREGIVER  
3 PLACEMENT PROGRAM. (a) The department shall develop and procure a  
4 program to:

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

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

12 (b) To the extent permitted by federal law, the department  
13 shall use federal funds available under Title IV-E, Social Security  
14 Act (42 U.S.C. Section 670 et seq.), to administer the program under  
15 this subchapter.

16 (c) The executive commissioner shall adopt rules necessary  
17 to implement this subchapter. The rules must include eligibility  
18 criteria for receiving assistance and services under this  
19 subchapter.

20 Sec. 264.753. EXPEDITED PLACEMENT. The department or other  
21 authorized entity shall expedite the completion of the background  
22 and criminal history check, the home study, and any other  
23 administrative procedure to ensure that the child is placed with a  
24 qualified relative or caregiver as soon as possible after the date  
25 the caregiver is identified.

26 Sec. 264.754. INVESTIGATION OF PROPOSED PLACEMENT. Before  
27 placing a child with a proposed relative or other designated

1 caregiver, the department must conduct an investigation to  
2 determine whether the proposed placement is in the child's best  
3 interest.

4 Sec. 264.755. CAREGIVER ASSISTANCE AGREEMENT. (a) The  
5 department shall, subject to the availability of funds, enter into  
6 a caregiver assistance agreement with each relative or other  
7 designated caregiver to provide monetary assistance and additional  
8 support services to the caregiver. The monetary assistance and  
9 support services shall be based on a family's need, as determined by  
10 rules adopted by the executive commissioner.

11 (b) Monetary assistance provided under this section must  
12 include a one-time cash payment of not more than \$1,000 to the  
13 caregiver on the initial placement of a child or a sibling group.  
14 The cash payment must be provided on the initial placement of each  
15 child with the caregiver and is provided to assist the caregiver in  
16 purchasing essential child-care items such as furniture and  
17 clothing.

18 (c) Monetary assistance and additional support services  
19 provided under this section may include:

20 (1) case management services and training and  
21 information about the child's needs until the caregiver is  
22 appointed permanent managing conservator;

23 (2) referrals to appropriate state agencies  
24 administering public benefits or assistance programs for which the  
25 child, the caregiver, or the caregiver's family may qualify;

26 (3) family counseling not provided under the Medicaid  
27 program for the caregiver's family for a period not to exceed two

1 years from the date of initial placement;

2 (4) if the caregiver meets the eligibility criteria  
3 determined by rules adopted by the executive commissioner,  
4 reimbursement of all child-care expenses incurred while the child  
5 is under 13 years of age, or under 18 years of age if the child has a  
6 developmental disability, and while the department is the child's  
7 managing conservator;

8 (5) if the caregiver meets the eligibility criteria  
9 determined by rules adopted by the executive commissioner,  
10 reimbursement of 50 percent of child-care expenses incurred after  
11 the caregiver is appointed permanent managing conservator of the  
12 child while the child is under 13 years of age, or under 18 years of  
13 age if the child has a developmental disability; and

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

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

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

26 Sec. 264.758. FUNDS. The department and other state  
27 agencies shall actively seek and use federal funds available for

1 the purposes of this subchapter.

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

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

11 (d) As soon as possible after the effective date of this  
12 Act, the Department of Family and Protective Services shall take  
13 all necessary actions to apply for a federal waiver under Title  
14 IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), to use  
15 federal funds available under that title to implement the relative  
16 and other designated caregiver placement program under Subchapter  
17 I, Chapter 264, Family Code, as added by this section.

18 SECTION 1.63. Chapter 264, Family Code, is amended by  
19 adding Subchapter J to read as follows:

20 SUBCHAPTER J. FAMILY DRUG COURT PROGRAM

21 Sec. 264.801. FAMILY DRUG COURT PROGRAM DEFINED. In this  
22 subchapter, "family drug court program" means a program that has  
23 the following essential characteristics:

24 (1) the integration of substance abuse treatment  
25 services in the processing of civil cases in the child welfare  
26 system with the goal of family reunification;

27 (2) the use of a comprehensive case management

1 approach involving department caseworkers, court-appointed case  
2 managers, and court-appointed special advocates to rehabilitate a  
3 parent who has had a child removed from the parent's care by the  
4 department because of suspected child abuse or neglect and who is  
5 suspected of substance abuse;

6 (3) early identification and prompt placement of  
7 eligible parents who volunteer to participate in the program;

8 (4) comprehensive substance abuse needs assessment  
9 and referral to an appropriate substance abuse treatment agency;

10 (5) a progressive treatment approach with specific  
11 requirements that a parent must meet to advance to the next phase of  
12 the program;

13 (6) monitoring of abstinence through periodic alcohol  
14 or other drug testing;

15 (7) ongoing judicial interaction with program  
16 participants;

17 (8) monitoring and evaluation of program goals and  
18 effectiveness;

19 (9) continuing interdisciplinary education to promote  
20 effective program planning, implementation, and operations; and

21 (10) development of partnerships with public agencies  
22 and community organizations.

23 Sec. 264.802. AUTHORITY TO ESTABLISH PROGRAM. The  
24 commissioners court of a county may establish a family drug court  
25 program for persons who:

26 (1) have had a child removed from their care by the  
27 department; and

1           (2) are suspected by the department or a court of  
2 having a substance abuse problem.

3           Sec. 264.803. OVERSIGHT. (a) The lieutenant governor and  
4 the speaker of the house of representatives may assign to  
5 appropriate legislative committees duties relating to the  
6 oversight of family drug court programs established under this  
7 subchapter.

8           (b) A legislative committee or the governor may request the  
9 state auditor to perform a management, operations, or financial or  
10 accounting audit of a family drug court program established under  
11 this subchapter.

12           Sec. 264.804. PARTICIPANT PAYMENT FOR TREATMENT AND  
13 SERVICES. A family drug court program may require a participant to  
14 pay the cost of all treatment and services received while  
15 participating in the program, based on the participant's ability to  
16 pay.

17           Sec. 264.805. FUNDING. A county creating a family drug  
18 court under this chapter shall explore the possibility of using  
19 court improvement project funds to finance the family drug court in  
20 the county. The county shall also explore the availability of  
21 federal and state matching funds to finance the court.

22           SECTION 1.64. Chapter 265, Family Code, is amended by  
23 adding Section 265.004 to read as follows:

24           Sec. 265.004. USE OF EVIDENCE-BASED PROGRAMS FOR AT-RISK  
25 FAMILIES. (a) To the extent that money is appropriated for the  
26 purpose, the department shall fund evidence-based programs offered  
27 by community-based organizations that are designed to prevent or



1 ameliorate child abuse and neglect.

2 (b) The department shall place priority on programs that  
3 target children whose race or ethnicity is disproportionately  
4 represented in the child protective services system.

5 (c) The department shall periodically evaluate the  
6 evidence-based abuse and neglect prevention programs to determine  
7 the continued effectiveness of the programs.

8 SECTION 1.65. (a) Subtitle E, Title 5, Family Code, is  
9 amended by adding Chapter 266 to read as follows:

10 CHAPTER 266. MEDICAL CARE AND EDUCATIONAL SERVICES

11 FOR CHILDREN IN FOSTER CARE

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 266.001. DEFINITIONS. In this chapter:

14 (1) "Commission" means the Health and Human Services  
15 Commission.

16 (2) "Department" means the Department of Family and  
17 Protective Services.

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

20 (4) "Foster child" means a child who is in the managing  
21 conservatorship of the department.

22 (5) "Medical care" means all health care and related  
23 services provided under the medical assistance program under  
24 Chapter 32, Human Resources Code, and described by Section  
25 32.003(4), Human Resources Code.

26 Sec. 266.002. CONSTRUCTION WITH OTHER LAW. This chapter  
27 does not limit the right to consent to medical, dental,

1 psychological, and surgical treatment under Chapter 32.

2 Sec. 266.003. MEDICAL SERVICES FOR CHILD ABUSE AND NEGLECT  
3 VICTIMS. (a) The commission shall collaborate with health care  
4 and child welfare professionals to design a comprehensive,  
5 cost-effective medical services delivery model, either directly or  
6 by contract, to meet the needs of children served by the department.  
7 The medical services delivery model must include:

8 (1) the designation of health care facilities with  
9 expertise in the forensic assessment, diagnosis, and treatment of  
10 child abuse and neglect as pediatric centers of excellence;

11 (2) a statewide telemedicine system to link department  
12 investigators and caseworkers with pediatric centers of excellence  
13 or other medical experts for consultation;

14 (3) identification of a medical home for each foster  
15 child on entering foster care at which the child will receive an  
16 initial comprehensive assessment as well as preventive treatments,  
17 acute medical services, and therapeutic and rehabilitative care to  
18 meet the child's ongoing physical and mental health needs  
19 throughout the duration of the child's stay in foster care;

20 (4) the development and implementation of health  
21 passports as described in Section 266.006;

22 (5) establishment and use of a management information  
23 system that allows monitoring of medical care that is provided to  
24 all children in foster care;

25 (6) the use of medical advisory committees and medical  
26 review teams, as appropriate, to establish treatment guidelines and  
27 criteria by which individual cases of medical care provided to

1 children in foster care will be identified for further, in-depth  
2 review;

3 (7) development of the training program described by  
4 Section 266.004(h);

5 (8) provision for the summary of medical care  
6 described by Section 266.007; and

7 (9) 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 medical care.

10 (b) The commission shall collaborate with health and human  
11 services agencies, community partners, the health care community,  
12 and federal health and social services programs to maximize  
13 services and benefits available under this section.

14 (c) The executive commissioner shall adopt rules necessary  
15 to implement this chapter.

16 Sec. 266.004. CONSENT FOR MEDICAL CARE. (a) Medical care  
17 may not be provided to a child in foster care unless the person  
18 authorized by this section has provided consent.

19 (b) Except as provided by Section 266.010, the court may  
20 authorize the following persons to consent to medical care for a  
21 foster child:

22 (1) an individual designated by name in an order of the  
23 court, including the child's foster parent or the child's parent, if  
24 the parent's rights have not been terminated and the court  
25 determines that it is in the best interest of the parent's child to  
26 allow the parent to make medical decisions on behalf of the child;  
27 or

1           (2) the department or an agent of the department.

2           (c) If the person authorized by the court to consent to  
3 medical care is the department or an agent of the department, the  
4 department shall, not later than the fifth business day after the  
5 date the court provides authorization, file with the court and each  
6 party the name of the individual who will exercise the duty and  
7 responsibility of providing informed consent on behalf of the  
8 department. If that individual changes, the department shall file  
9 notice of the change with the court and each party not later than  
10 the fifth business day after the date of the change.

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

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

24           (f) If a physician who has examined or treated the foster  
25 child has concerns regarding the medical care provided to the  
26 foster child, the physician may file a letter with the court stating  
27 the reasons for the physician's concerns. The court shall provide a

1 copy of the letter to each person entitled to notice under Section  
2 263.301(b).

3 (g) On its own motion or in response to a petition under  
4 Subsection (e) or Section 266.010, the court may issue any order  
5 related to the medical care of a foster child that the court  
6 determines is in the best interest of the child.

7 (h) Notwithstanding Subsection (b), a person may not be  
8 authorized to consent to medical care provided to a foster child  
9 unless the person has completed a department-approved training  
10 program related to informed consent and the provision of all areas  
11 of medical care as defined by Section 266.001. This subsection does  
12 not apply to a parent whose rights have not been terminated unless  
13 the court orders the parent to complete the training.

14 (i) The person authorized under Subsection (b) to consent to  
15 medical care of a foster child shall participate in each  
16 appointment of the child with the provider of the medical care.

17 (j) Nothing in this section requires the identity of a  
18 foster parent to be publicly disclosed.

19 Sec. 266.005. PARENTAL NOTIFICATION OF SIGNIFICANT MEDICAL  
20 CONDITIONS. (a) In this section, "significant medical condition"  
21 means an injury or illness that is life-threatening or has  
22 potentially serious long-term health consequences, including  
23 hospitalization for surgery or other procedures, except minor  
24 emergency care.

25 (b) Except as provided by Subsection (c), the department  
26 shall make reasonable efforts to notify the child's parents within  
27 24 hours of a significant medical condition involving a foster

1 child.

2 (c) The department is not required to provide notice under  
3 Subsection (b) to a parent who:

4 (1) has failed to give the department current contact  
5 information and cannot be located;

6 (2) has executed an affidavit of relinquishment of  
7 parental rights;

8 (3) has had the parent's parental rights terminated;

9 or

10 (4) has had access to medical information otherwise  
11 restricted by the court.

12 Sec. 266.006. HEALTH PASSPORT. (a) The commission, in  
13 conjunction with the department, and with the assistance of  
14 physicians and other health care providers experienced in the care  
15 of foster children and children with disabilities and with the use  
16 of electronic health records, shall develop and provide a health  
17 passport for each foster child. The passport must be maintained in  
18 an electronic format and use the commission's and the department's  
19 existing computer resources to the greatest extent possible.

20 (b) The executive commissioner shall adopt rules specifying  
21 the information required to be included in the passport. The  
22 required information may include:

23 (1) the name and address of each of the child's  
24 physicians and health care providers;

25 (2) a record of each visit to a physician or other  
26 health care provider, including routine checkups conducted in  
27 accordance with the Texas Health Steps program;

1           (3) an immunization record that may be exchanged with  
2 ImmTrac;

3           (4) a list of the child's known health problems and  
4 allergies;

5           (5) information on all medications prescribed to the  
6 child in adequate detail to permit refill of prescriptions,  
7 including the disease or condition that the medication treats; and

8           (6) any other available health history that physicians  
9 and other health care providers who provide care for the child  
10 determine is important.

11           (c) The system used to access the health passport must be  
12 secure and maintain the confidentiality of the child's health  
13 records.

14           (d) Health passport information shall be part of the  
15 department's record for the child as long as the child remains in  
16 foster care.

17           (e) The commission shall provide training or instructional  
18 materials to foster parents, physicians, and other health care  
19 providers regarding use of the health passport.

20           (f) The department shall make health passport information  
21 available in printed and electronic formats to the following  
22 individuals when a child is discharged from foster care:

23           (1) the child's legal guardian, managing conservator,  
24 or parent; or

25           (2) the child, if the child is at least 18 years of age  
26 or has had the disabilities of minority removed.

27           Sec. 266.007. JUDICIAL REVIEW OF MEDICAL CARE. (a) At

1 each hearing under Chapter 263, or more frequently if ordered by the  
2 court, the court shall review a summary of the medical care provided  
3 to the foster child since the last hearing. The summary must  
4 include information regarding:

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

8 (2) all medical and mental health treatment that the  
9 child is receiving and the child's progress with the treatment;

10 (3) any medication prescribed for the child and the  
11 condition, diagnosis, and symptoms for which the medication was  
12 prescribed and the child's progress with the medication;

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

16 (5) any adverse reaction to or side effects of any  
17 medical treatment provided to the child;

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

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

24 (8) other information required by department rule or  
25 by the court.

26 (b) At or before each hearing under Chapter 263, the  
27 department shall provide the summary of medical care described by



1 Subsection (a) to:

2 (1) the court;

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

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

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

9 (5) any other person determined by the department or  
10 the court to be necessary or appropriate for review of the provision  
11 of medical care to foster children.

12 (c) At each hearing under Chapter 263, the foster child  
13 shall be provided the opportunity to express to the court the  
14 child's views on the medical care being provided to the child.

15 Sec. 266.008. EDUCATION PASSPORT. (a) The commission  
16 shall develop an education passport for each foster child. The  
17 commission, in conjunction with the department, shall determine the  
18 format of the passport. The passport may be maintained in an  
19 electronic format. The passport must contain educational records  
20 of the child, including the names and addresses of educational  
21 providers, the child's grade-level performance, and any other  
22 educational information the commission determines is important.

23 (b) The department shall maintain the passport as part of  
24 the department's records for the child as long as the child remains  
25 in foster care.

26 (c) The department shall make the passport available to the  
27 person authorized to consent to medical care for the foster child

1 and to a provider of medical care to the foster child if access to  
2 the foster child's educational information is necessary to the  
3 provision of medical care and is not prohibited by law.

4 (d) The department and the commission shall collaborate  
5 with the Texas Education Agency to develop policies and procedures  
6 to ensure that the needs of foster children are met in every school  
7 district.

8 Sec. 266.009. PROVISION OF MEDICAL CARE IN EMERGENCY.

9 (a) Consent or court authorization for the medical care of a  
10 foster child otherwise required by this chapter is not required in  
11 an emergency during which it is immediately necessary to provide  
12 medical care to the foster child to prevent the imminent  
13 probability of death or substantial bodily harm to the child or  
14 others, including circumstances in which:

15 (1) the child is overtly or continually threatening or  
16 attempting to commit suicide or cause serious bodily harm to the  
17 child or others; or

18 (2) the child is exhibiting the sudden onset of a  
19 medical condition manifesting itself by acute symptoms of  
20 sufficient severity, including severe pain, such that the absence  
21 of immediate medical attention could reasonably be expected to  
22 result in placing the child's health in serious jeopardy, serious  
23 impairment of bodily functions, or serious dysfunction of any  
24 bodily organ or part.

25 (b) The physician providing the medical care or designee  
26 shall notify the person authorized to consent to medical care for a  
27 foster child about the decision to provide medical care without

1 consent or court authorization in an emergency not later than the  
2 second business day after the date of the provision of medical care  
3 under this section. This notification must be documented in the  
4 foster child's health passport.

5 (c) This section does not apply to the administration of  
6 medication under Subchapter G, Chapter 574, Health and Safety Code,  
7 to a foster child who is at least 16 years of age and who is placed  
8 in an inpatient mental health facility.

9 Sec. 266.010. CONSENT TO MEDICAL CARE BY FOSTER CHILD AT  
10 LEAST 16 YEARS OF AGE. (a) A foster child who is at least 16 years  
11 of age may consent to the provision of medical care, except as  
12 provided by Chapter 33, if the court with continuing jurisdiction  
13 determines that the child has the capacity to consent to medical  
14 care. If the child provides consent by signing a consent form, the  
15 form must be written in language the child can understand.

16 (b) A court with continuing jurisdiction may make the  
17 determination regarding the foster child's capacity to consent to  
18 medical care during a hearing under Chapter 263 or may hold a  
19 hearing to make the determination on its own motion. The court may  
20 issue an order authorizing the child to consent to all or some of  
21 the medical care as defined by Section 266.001. In addition, a  
22 foster child who is at least 16 years of age, or the foster child's  
23 attorney ad litem, may file a petition with the court for a hearing.  
24 If the court determines that the foster child lacks the capacity to  
25 consent to medical care, the court may consider whether the foster  
26 child has acquired the capacity to consent to medical care at  
27 subsequent hearings under Section 263.503.

1       (c) If the court determines that a foster child lacks the  
2 capacity to consent to medical care, the person authorized by the  
3 court under Section 266.004 shall continue to provide consent for  
4 the medical care of the foster child.

5       (d) If a foster child who is at least 16 years of age and who  
6 has been determined to have the capacity to consent to medical care  
7 refuses to consent to medical care and the department or private  
8 agency providing substitute care or case management services to the  
9 child believes that the medical care is appropriate, the department  
10 or the private agency may file a motion with the court requesting an  
11 order authorizing the provision of the medical care.

12       (e) The motion under Subsection (d) must include:

13               (1) the child's stated reasons for refusing the  
14 medical care; and

15               (2) a statement prepared and signed by the treating  
16 physician that the medical care is the proper course of treatment  
17 for the foster child.

18       (f) If a motion is filed under Subsection (d), the court  
19 shall appoint an attorney ad litem for the foster child if one has  
20 not already been appointed. The foster child's attorney ad litem  
21 shall:

22               (1) discuss the situation with the child;

23               (2) discuss the suitability of the medical care with  
24 the treating physician;

25               (3) review the child's medical and mental health  
26 records; and

27               (4) advocate to the court on behalf of the child's

1 expressed preferences regarding the medical care.

2 (g) The court shall issue an order authorizing the provision  
3 of the medical care in accordance with a motion under Subsection (d)  
4 to the foster child only if the court finds, by clear and convincing  
5 evidence, after the hearing that the medical care is in the best  
6 interest of the foster child and:

7 (1) the foster child lacks the capacity to make a  
8 decision regarding the medical care;

9 (2) the failure to provide the medical care will  
10 result in an observable and material impairment to the growth,  
11 development, or functioning of the foster child; or

12 (3) the foster child is at risk of suffering  
13 substantial bodily harm or of inflicting substantial bodily harm to  
14 others.

15 (h) In making a decision under this section regarding  
16 whether a foster child has the capacity to consent to medical care,  
17 the court shall consider:

18 (1) the maturity of the child;

19 (2) whether the child is sufficiently well informed to  
20 make a decision regarding the medical care; and

21 (3) the child's intellectual functioning.

22 (i) In determining whether the medical care is in the best  
23 interest of the foster child, the court shall consider:

24 (1) the foster child's expressed preference regarding  
25 the medical care, including perceived risks and benefits of the  
26 medical care;

27 (2) likely consequences to the foster child if the

1 child does not receive the medical care;

2 (3) the foster child's prognosis, if the child does  
3 receive the medical care; and

4 (4) whether there are alternative, less intrusive  
5 treatments that are likely to reach the same result as provision of  
6 the medical care.

7 (j) This section does not apply to emergency medical care.  
8 An emergency relating to a foster child who is at least 16 years of  
9 age, other than a child in an inpatient mental health facility, is  
10 governed by Section 266.009.

11 (k) This section does not apply to the administration of  
12 medication under Subchapter G, Chapter 574, Health and Safety Code,  
13 to a foster child who is at least 16 years of age and who is placed  
14 in an inpatient mental health facility.

15 (l) Before a foster child reaches the age of 16, the  
16 department or the private agency providing substitute care or case  
17 management services to the foster child shall advise the foster  
18 child of the right to a hearing under this section to determine  
19 whether the foster child may consent to medical care. The  
20 department or the private agency providing substitute care or case  
21 management services shall provide the foster child with training on  
22 informed consent and the provision of medical care as part of the  
23 Preparation for Adult Living Program.

24 Sec. 266.011. STUDY OF INCENTIVES TO PRESCRIBE PSYCHOTROPIC  
25 DRUGS. (a) The department shall study the level of care system the  
26 department uses to determine a child's foster care needs to  
27 ascertain whether the system creates incentives for prescribing

1 psychotropic medications to children in foster care.

2 (b) No later than October 1, 2006, the department shall  
3 report the results of the study to the legislature. The report must  
4 include the department's proposed changes to the level of care  
5 system.

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

7 (b) Not later than September 1, 2007, the Department of  
8 Family and Protective Services shall implement the health passport  
9 required by Section 266.006, Family Code, as added by this section.

10 (c) The Health and Human Services Commission is required to  
11 develop and implement the education passport program required by  
12 Section 266.008, Family Code, as added by this section, if the  
13 legislature appropriates money specifically for that purpose. If  
14 the legislature does not appropriate money specifically for that  
15 purpose, the commission may, but is not required to, develop and  
16 implement the education passport program using other  
17 appropriations available for that purpose. In addition, the  
18 commission may develop and implement the education passport program  
19 required by Section 266.008, Family Code, as added by this section,  
20 only if technology necessary to ensure privacy is available.

21 (d) If the Health and Human Services Commission develops and  
22 implements the education passport program required by Section  
23 266.008, Family Code, as added by this section, the commission  
24 shall finalize the form and content of the passport not later than  
25 March 1, 2006.

26 SECTION 1.66. Section 51.961, Government Code, is amended  
27 to read as follows:

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

4           (b) Except as provided by Subsection (c), the district clerk  
5 or county clerk shall collect the family protection fee at the time  
6 a suit for dissolution of a marriage under Chapter 6, Family Code,  
7 is filed. The fee is in addition to any other fee collected by the  
8 district clerk or county clerk.

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

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

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

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

21           (e) A service provider who receives funds under Subsection  
22 (d) may provide family violence and child abuse prevention,  
23 intervention, family strengthening, mental health, counseling,  
24 legal, and marriage preservation services to families that are at  
25 risk of experiencing or that have experienced family violence or  
26 the abuse or neglect of a child.

27           (f) In this section, "family violence" has the meaning



1 assigned by Section 71.004, Family Code.

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

6 SECTION 1.67. Section 101.061, Government Code, is amended  
7 to read as follows:

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

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

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

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

22 (4) appellate judicial system filing fees for:

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

25 (B) Second Court of Appeals District (Sec.  
26 22.2031, Government Code) . . . not more than \$5;

27 (C) Fourth Court of Appeals District (Sec.

1 22.2051, Government Code) . . . not more than \$5;

2 (D) Fifth Court of Appeals District (Sec.  
3 22.2061, Government Code) . . . not more than \$5; and

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

6 (5) additional filing fees:

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

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

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

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

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

22 (D) on the filing of any civil action or  
23 proceeding requiring a filing fee, including an appeal, and on the  
24 filing of any counterclaim, cross-action, intervention,  
25 interpleader, or third-party action requiring a filing fee, to fund  
26 civil legal services for the indigent:

27 (i) for family law cases and proceedings as

1 defined by Section 25.0002, Government Code (Sec. 133.152, Local  
2 Government Code) . . . \$5; or

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

6 (6) for filing a suit, including an appeal from an  
7 inferior court:

8 (A) for a suit with 10 or fewer plaintiffs (Sec.  
9 51.317, Government Code) . . . \$50;

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

12 (C) for a suit with at least 26 but not more than  
13 100 plaintiffs (Sec. 51.317, Government Code) . . . \$100;

14 (D) for a suit with at least 101 but not more than  
15 500 plaintiffs (Sec. 51.317, Government Code) . . . \$125;

16 (E) for a suit with at least 501 but not more than  
17 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$150; or

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

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

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

27 (9) for records management and preservation (Sec.

- 1 51.317, Government Code) . . . \$10;
- 2 (10) for issuing a subpoena, including one copy (Sec.  
3 51.318, Government Code) . . . \$8;
- 4 (11) for issuing a citation, commission for  
5 deposition, writ of execution, order of sale, writ of execution and  
6 order of sale, writ of injunction, writ of garnishment, writ of  
7 attachment, or writ of sequestration not provided for in Section  
8 51.317, or any other writ or process not otherwise provided for,  
9 including one copy if required by law (Sec. 51.318, Government  
10 Code) . . . \$8;
- 11 (12) for searching files or records to locate a cause  
12 when the docket number is not provided (Sec. 51.318, Government  
13 Code) . . . \$5;
- 14 (13) for searching files or records to ascertain the  
15 existence of an instrument or record in the district clerk's office  
16 (Sec. 51.318, Government Code) . . . \$5;
- 17 (14) for abstracting a judgment (Sec. 51.318,  
18 Government Code) . . . \$8;
- 19 (15) for approving a bond (Sec. 51.318, Government  
20 Code) . . . \$4;
- 21 (16) for a certified copy of a record, judgment,  
22 order, pleading, or paper on file or of record in the district  
23 clerk's office, including certificate and seal, for each page or  
24 part of a page (Sec. 51.318, Government Code) . . . \$1;
- 25 (17) for a noncertified copy, for each page or part of  
26 a page (Sec. 51.318, Government Code) . . . not to exceed \$1;
- 27 (18) jury fee (Sec. 51.604, Government

1 Code) . . . \$30;

2 (19) for filing a report of divorce or annulment (Sec.  
3 194.002, Health and Safety Code) . . . \$1;

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

6 (21) additional filing fee for family protection on  
7 filing a suit for dissolution of a marriage under Chapter 6, Family  
8 Code, if authorized by the county commissioners court (Sec. 51.961,  
9 Government Code) . . . not to exceed \$30 [~~\$15~~];

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

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

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

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

22 (26) court costs on citation for contempt of court in  
23 Orange County for failure to comply with a child support order or  
24 order providing for possession of or access to a child (Sec.  
25 152.1873, Human Resources Code) . . . amount determined by  
26 district clerk;

27 (27) fee on filing a suit requesting an adoption in

1 Orange County (Sec. 152.1874, Human Resources Code) . . . not less  
2 than \$25;

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

5 (29) additional filing fee to fund the courthouse  
6 security fund, if authorized by the county commissioners court  
7 (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

8 (30) additional filing fee for filing documents not  
9 subject to certain filing fees to fund the courthouse security  
10 fund, if authorized by the county commissioners court (Sec.  
11 291.008, Local Government Code) . . . \$1;

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

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

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

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

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

6           SECTION 1.68. Section 102.021, Government Code, is amended  
7 to read as follows:

8           Sec. 102.021. COURT COSTS ON CONVICTION. A person  
9 convicted of an offense shall pay, in addition to all other costs:

10           (1) court costs on conviction of a felony (Sec.  
11 133.102, Local Government Code) . . . \$133;

12           (2) court costs on conviction of a Class A or Class B  
13 misdemeanor (Sec. 133.102, Local Government Code) . . . \$83;

14           (3) court costs on conviction of a nonjailable  
15 misdemeanor offense, including a criminal violation of a municipal  
16 ordinance, other than a conviction of an offense relating to a  
17 pedestrian or the parking of a motor vehicle (Sec. 133.102, Local  
18 Government Code) . . . \$40;

19           (4) court costs on certain convictions in statutory  
20 county courts (Sec. 51.702, Government Code) . . . \$15;

21           (5) court costs on certain convictions in certain  
22 county courts (Sec. 51.703, Government Code) . . . \$15;

23           (6) a time payment fee if convicted of a felony or  
24 misdemeanor for paying any part of a fine, court costs, or  
25 restitution on or after the 31st day after the date on which a  
26 judgment is entered assessing the fine, court costs, or restitution  
27 (Sec. 133.103, Local Government Code) . . . \$25;

1           (7) a fee for services of prosecutor (Art. 102.008,  
2 Code of Criminal Procedure) . . . \$25;

3           (8) fees for services of peace officer:

4           (A) issuing a written notice to appear in court  
5 for certain violations (Art. 102.011, Code of Criminal  
6 Procedure) . . . \$5;

7           (B) executing or processing an issued arrest  
8 warrant or capias (Art. 102.011, Code of Criminal  
9 Procedure) . . . \$50;

10          (C) summoning a witness (Art. 102.011, Code of  
11 Criminal Procedure) . . . \$5;

12          (D) serving a writ not otherwise listed (Art.  
13 102.011, Code of Criminal Procedure) . . . \$35;

14          (E) taking and approving a bond and, if  
15 necessary, returning the bond to courthouse (Art. 102.011, Code of  
16 Criminal Procedure) . . . \$10;

17          (F) commitment or release (Art. 102.011, Code of  
18 Criminal Procedure) . . . \$5;

19          (G) summoning a jury (Art. 102.011, Code of  
20 Criminal Procedure) . . . \$5;

21          (H) attendance of a prisoner in habeas corpus  
22 case if prisoner has been remanded to custody or held to bail (Art.  
23 102.011, Code of Criminal Procedure) . . . \$8 each day;

24          (I) mileage for certain services performed (Art.  
25 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

26          (J) services of a sheriff or constable who serves  
27 process and attends examining trial in certain cases (Art. 102.011,



1 Code of Criminal Procedure) . . . not to exceed \$5;

2 (9) services of a peace officer in conveying a witness  
3 outside the county (Art. 102.011, Code of Criminal  
4 Procedure) . . . \$10 per day or part of a day, plus actual  
5 necessary travel expenses;

6 (10) overtime of peace officer for time spent  
7 testifying in the trial or traveling to or from testifying in the  
8 trial (Art. 102.011, Code of Criminal Procedure) . . . actual  
9 cost;

10 (11) court costs on an offense relating to rules of the  
11 road, when offense occurs within a school crossing zone (Art.  
12 102.014, Code of Criminal Procedure) . . . \$25;

13 (12) court costs on an offense of passing a school bus  
14 (Art. 102.014, Code of Criminal Procedure) . . . \$25;

15 (13) court costs on an offense of truancy or  
16 contributing to truancy (Art. 102.014, Code of Criminal  
17 Procedure) . . . \$20;

18 (14) cost for visual recording of intoxication arrest  
19 before conviction (Art. 102.018, Code of Criminal  
20 Procedure) . . . \$15;

21 (15) cost of certain evaluations (Art. 102.018, Code  
22 of Criminal Procedure) . . . actual cost;

23 (16) additional costs attendant to certain  
24 intoxication convictions under Chapter 49, Penal Code, for  
25 emergency medical services, trauma facilities, and trauma care  
26 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

27 (16-a) additional costs attendant to certain child

1 sexual assault and related convictions, for child abuse prevention  
2 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

3 (17) cost for DNA testing for certain felonies (Art.  
4 102.020, Code of Criminal Procedure) . . . \$250;

5 (18) court cost on an offense of public lewdness or  
6 indecent exposure (Art. 102.020, Code of Criminal  
7 Procedure) . . . \$50;

8 (19) court cost on conviction of a misdemeanor under  
9 Subtitle C, Title 7, Transportation Code (Sec. 542.403,  
10 Transportation Code) . . . \$3;

11 (20) cost for impoundment of vehicle (Sec. 601.263,  
12 Transportation Code) . . . \$15 per day; and

13 (21) a civil and criminal enforcement cost on  
14 conviction of an offense of, or related to, the nonpayment of a toll  
15 in certain counties (Sec. 284.2031, Transportation Code) . . . \$1.

16 SECTION 1.69. Subdivision (2), Subsection (a), Section  
17 411.114, Government Code, is amended to read as follows:

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

22 (A) an applicant for a license, registration,  
23 certification, or listing under Chapter 42, Human Resources Code,  
24 or Chapter 249, Health and Safety Code [~~, or a person who registers~~  
25 ~~with or has been issued a certificate to operate under~~  
26 ~~accreditation by the Department of Protective and Regulatory~~  
27 ~~Services under Subchapter E, Chapter 42, Human Resources Code];~~

1 (B) an owner, operator, or employee of or an  
2 applicant for employment by a child-care facility, child-placing  
3 agency, family home, or maternity home licensed, registered,  
4 certified, or listed under Chapter 42, Human Resources Code, or  
5 Chapter 249, Health and Safety Code [~~, or by a child-care facility or  
6 child-placing agency that is seeking to register with or has been  
7 issued a certificate to operate under accreditation by the  
8 Department of Protective and Regulatory Services under Subchapter  
9 E, Chapter 42, Human Resources Code~~];

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

15 (D) an applicant selected for a position with the  
16 Department of Family and Protective [~~and Regulatory~~] Services, the  
17 duties of which include direct delivery of protective services to  
18 children, elderly persons, or persons with a disability;

19 (E) an employee of, an applicant for employment  
20 with, or a volunteer or an applicant volunteer with a business  
21 entity or person that contracts with the Department of Family and  
22 Protective [~~and Regulatory~~] Services to provide direct delivery of  
23 protective services to children, elderly persons, or persons with a  
24 disability, if the person's duties or responsibilities include  
25 direct contact with children, elderly persons, or persons with a  
26 disability;

27 (F) a registered volunteer with the Department of

1 Family and Protective [~~and Regulatory~~] Services;

2 (G) a person providing or applying to provide  
3 in-home, adoptive, or foster care for children in the care of the  
4 Department of Family and Protective [~~and Regulatory~~] Services and  
5 other persons living in the residence in which the child will  
6 reside;

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

11 (I) a person who is the subject of a report the  
12 Department of Family and Protective [~~and Regulatory~~] Services  
13 receives alleging that the person has abused, neglected, or  
14 exploited a child, an elderly person, or a person with a disability,  
15 provided that:

16 (i) the report alleges the person has  
17 engaged in conduct that meets the statutory definition of abuse,  
18 neglect, or exploitation under Chapter 261, Family Code, or Chapter  
19 48, Human Resources Code; and

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

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

26 (K) through a contract with a nonprofit  
27 management center, an employee of, an applicant for employment

1 with, or a volunteer or an applicant volunteer with a nonprofit,  
2 tax-exempt organization that provides any service that involves the  
3 care of or access to children, elderly persons, or persons with a  
4 disability; or

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

9 SECTION 1.70. (a) Subchapter B, Chapter 531, Government  
10 Code, is amended by adding Section 531.078 to read as follows:

11 Sec. 531.078. POOLED FUNDING FOR FOSTER CARE PREVENTIVE  
12 SERVICES. (a) The commission and the Department of Family and  
13 Protective Services shall develop and implement a plan to combine,  
14 to the extent and in the manner allowed by Section 51, Article III,  
15 Texas Constitution, and other applicable law, funds of those  
16 agencies with funds of other appropriate state agencies and local  
17 governmental entities to provide services designed to prevent  
18 children from being placed in foster care. The preventive services  
19 may include:

- 20 (1) child and family counseling;  
21 (2) instruction in parenting and homemaking skills;  
22 (3) parental support services;  
23 (4) temporary respite care; and  
24 (5) crisis services.

25 (b) The plan must provide for:

26 (1) state funding to be distributed to other state  
27 agencies, local governmental entities, or private entities only as

1 specifically directed by the terms of a grant or contract to provide  
2 preventive services;

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

9 (3) a reporting mechanism to ensure appropriate use of  
10 funds.

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

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

21 (2) from the federal government or a private entity to  
22 provide the services statewide or in a particular geographic area  
23 of this state.

24 (b) Not later than November 1, 2006, the Health and Human  
25 Services Commission shall provide to the governor and the  
26 Legislative Budget Board a report on the status and progress of the  
27 preventive services funding plan required by Section 531.078,

1 Government Code, as added by this section.

2 SECTION 1.71. Section 651.004, Government Code, is amended  
3 by adding Subsection (e) to read as follows:

4 (e) The Department of Family and Protective Services is not  
5 required to comply with management-to-staff ratio requirements of  
6 this section with respect to caseworker supervisors, program  
7 directors, and program administrators.

8 SECTION 1.72. (a) Subchapter C, Chapter 2155, Government  
9 Code, is amended by adding Section 2155.1442 to read as follows:

10 Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACT  
11 MANAGEMENT. (a) Subject to Subsection (e), the state auditor  
12 shall conduct a management review of the residential contract  
13 management employees of the Health and Human Services Commission  
14 and the Department of Family and Protective Services and make  
15 recommendations regarding the organization of, and skills and  
16 educational requirements for, those employees. The state auditor  
17 shall also make recommendations regarding the implementation of  
18 financial accountability provisions and processes to ensure  
19 effective and efficient expenditure of state and other contract  
20 funds. The state auditor shall report annually to the governor, the  
21 lieutenant governor, the speaker of the house of representatives,  
22 and the comptroller on the auditor's recommendations and the  
23 commission's and department's implementation of each  
24 recommendation.

25 (b) The Health and Human Services Commission shall contract  
26 with the state auditor to perform on-site financial audits of  
27 selected residential contractors as necessary. The state auditor,

1 in consultation with the commission, shall select the contractors  
2 to audit based on the contract's risk assessment rating,  
3 allegations of fraud or misuse of state or other contract funds, or  
4 other appropriate audit selection criteria. The residential  
5 contractors selected to be audited must be included in the audit  
6 plan and approved by the legislative audit committee under Section  
7 321.013.

8 (c) The Department of Family and Protective Services shall  
9 require that all files related to contracts for residential care of  
10 foster children:

11 (1) be complete and accurately reflect the  
12 contractor's actual updated contract performance; and

13 (2) be maintained in accordance with the department's  
14 record retention procedures and made available to the state auditor  
15 when requested.

16 (d) Subject to the availability of funds appropriated for  
17 the purpose, the Department of Family and Protective Services may  
18 develop an Internet-based system to enable residential contractors  
19 to review their reimbursement accounts or other pertinent financial  
20 data and reconcile their accounts.

21 (e) Work performed under Subsections (a) and (b) by the  
22 state auditor is subject to approval by the legislative audit  
23 committee for inclusion in the audit plan under Section 321.013(c).

24 (b) Section 2155.1442, Government Code, as added by this  
25 section, applies only to a contract that is entered into or renewed  
26 on or after the effective date of this section. A contract entered  
27 into or renewed before that date is governed by the law in effect on



1 the date the contract is entered into or renewed, and the former law  
2 is continued in effect for that purpose.

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

9 (d) Not later than October 1, 2011, the state auditor shall  
10 begin the on-site financial reviews of selected contractors  
11 required by Subsection (b), Section 2155.1442, Government Code, as  
12 added by this section.

13 SECTION 1.73. The heading to Subtitle D, Title 2, Human  
14 Resources Code, is amended to read as follows:

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

17 SECTION 1.74. The heading to Chapter 40, Human Resources  
18 Code, is amended to read as follows:

19 CHAPTER 40. DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~]  
20 SERVICES

21 SECTION 1.75. Subdivisions (3) and (5), Section 40.001,  
22 Human Resources Code, are amended to read as follows:

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

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

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

4                    (B) services designed to help a child return,  
5 when the return is safe and appropriate, to the family from which  
6 the child was removed [~~the protection of parents and their children~~  
7 ~~from needless family disruption because of unfounded accusations of~~  
8 ~~child abuse or neglect. It does not include the provision of state~~  
9 ~~social services for the rehabilitation of parents convicted of~~  
10 ~~abusing or neglecting their children~~].

11            SECTION 1.76. Subsection (b), Section 40.002, Human  
12 Resources Code, is amended to read as follows:

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

14                    (1) provide protective services for children and  
15 elderly and disabled persons, including investigations of alleged  
16 abuse, neglect, or exploitation in facilities of the Texas  
17 Department of Mental Health and Mental Retardation or its successor  
18 agency;

19                    (2) provide family support and family preservation  
20 services that respect the fundamental right of parents to control  
21 the education and upbringing of their children;

22                    (3) license, register, and enforce regulations  
23 applicable to child-care facilities, ~~[and]~~ child-care  
24 administrators, and child-placing agency administrators; and

25                    (4) implement and manage programs intended to provide  
26 early intervention or prevent at-risk behaviors that lead to child  
27 abuse, delinquency, running away, truancy, and dropping out of

1 school.

2 SECTION 1.77. Section 40.003, Human Resources Code, is  
3 amended to read as follows:

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

9 SECTION 1.78. Section 40.030, Human Resources Code, is  
10 amended to read as follows:

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

15 SECTION 1.79. The heading to Section 40.0305, Human  
16 Resources Code, is amended to read as follows:

17 Sec. 40.0305. STRATEGIC USE OF TECHNOLOGY [~~STEERING~~  
18 ~~COMMITTEE~~].

19 SECTION 1.80. Subsections (a), (d), and (e), Section  
20 40.0305, Human Resources Code, are amended to read as follows:

21 (a) The department shall continually explore the strategic  
22 use of technology as a means to improve services, reduce workload  
23 burdens, increase accountability, and enhance the overall  
24 efficiency and effectiveness of department operations. The  
25 department shall develop strategic plans and seek funding to  
26 implement technology enhancements that the department determines  
27 are feasible and cost-effective [~~establish a strategic technology~~

1 ~~steering committee within the department to evaluate major~~  
2 ~~information technology project proposals].~~

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

6 (1) assess the major information needs of the  
7 department;

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

10 (3) forecast the returns to the department on project  
11 investments;

12 (4) evaluate the department's available information  
13 resources; and

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

16 (e) To the extent that funds are appropriated for these  
17 specific purposes, the department shall implement the following  
18 technology projects:

19 (1) a mobile technology project, including online  
20 transcription services designed to:

21 (A) increase caseworker access to department  
22 policy and family case history;

23 (B) facilitate communication between caseworkers  
24 and supervisors;

25 (C) allow timely and accurate data entry; and

26 (D) reduce backlogged investigations; and

27 (2) a modified design of the department's automated

1 case management system to improve risk and safety assessment and  
2 service plan development, and to facilitate incorporation of  
3 historical case data [~~The steering committee shall make~~  
4 ~~recommendations to the executive director based on the committee's~~  
5 ~~performance of its duties~~].

6 SECTION 1.81. Subchapter B, Chapter 40, Human Resources  
7 Code, is amended by adding Section 40.03051 to read as follows:

8 Sec. 40.03051. PAPERLESS INFORMATION EXCHANGE PILOT  
9 PROGRAM. (a) The department shall develop and implement a pilot  
10 program to allow the paperless exchange of information between the  
11 department and courts with jurisdiction over child protective  
12 services cases.

13 (b) The pilot program must:

14 (1) include one or more courts with jurisdiction over  
15 child protective services cases; and

16 (2) be designed to facilitate the progression of child  
17 protective services cases through the judicial process.

18 (c) The executive commissioner shall adopt rules necessary  
19 to implement this section.

20 (d) Notwithstanding any other provision of this section,  
21 the department is not required to implement the pilot program  
22 unless funds are appropriated for that purpose.

23 (e) Not later than December 1, 2006, the department shall  
24 submit a report to the governor, the lieutenant governor, and the  
25 speaker of the house of representatives regarding the preliminary  
26 results of the pilot program. The report must include:

27 (1) a description of the status of the pilot program;

1           (2) a description of the effects of the pilot program  
2 on the progression of child protective services cases through the  
3 judicial process; and

4           (3) an evaluation of the feasibility of expanding the  
5 system statewide.

6           (f) This section expires September 1, 2009.

7           SECTION 1.82. Section 40.031, Human Resources Code, is  
8 amended to read as follows:

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

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

18           (c) The commissioner shall designate a person with law  
19 enforcement experience as the director of the investigations  
20 division.

21           (d) The investigations division shall, as appropriate,  
22 refer children and families in need of services to other department  
23 divisions or to other persons or entities with whom the department  
24 contracts for the provision of the needed services.

25           (e) Reports of alleged child abuse or neglect investigated  
26 under Section 261.401 or 261.404, Family Code, are not subject to  
27 investigation by the investigations division [~~board may allocate~~

1 ~~and reallocate functions, programs, and activities among the~~  
2 ~~department's divisions]~~.

3 SECTION 1.83. (a) Subchapter B, Chapter 40, Human  
4 Resources Code, is amended by adding Section 40.0324 to read as  
5 follows:

6 Sec. 40.0324. CASEWORKER REPLACEMENT PROGRAM. (a) To the  
7 extent that funding is available, the department shall develop a  
8 program to provide for the timely replacement of caseworkers with  
9 trainees hired in anticipation of vacancies.

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

12 (b) Unless sufficient funds are not available, the  
13 Department of Family and Protective Services shall develop the  
14 program required under Section 40.0324, Human Resources Code, as  
15 added by this section, not later than December 31, 2005.

16 SECTION 1.84. Subchapter B, Chapter 40, Human Resources  
17 Code, is amended by adding Section 40.036 to read as follows:

18 Sec. 40.036. ENHANCED TRAINING OF CHILD PROTECTIVE SERVICES  
19 CASEWORKERS. To improve the quality and consistency of training  
20 provided to child protective services caseworkers, the department  
21 shall:

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

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

27 (3) require that department caseworkers transferring

1 from one specialty to another must complete the core curriculum and  
2 advanced training for the new specialty before assuming their new  
3 responsibilities; and

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

6 SECTION 1.85. Subsection (c), Section 40.0525, Human  
7 Resources Code, is amended to read as follows:

8 (c) Subject to Section 40.031(b), this ~~[This]~~ section does  
9 not require the department to establish separate departments for  
10 investigations and service delivery.

11 SECTION 1.86. Subchapter C, Chapter 40, Human Resources  
12 Code, is amended by adding Section 40.0526 to read as follows:

13 Sec. 40.0526. BUILDING COMMUNITY PARTNERSHIPS TO SUPPORT  
14 CHILDREN AND FAMILIES. (a) The department shall develop a  
15 statewide strategy to build alliances and networks at the local  
16 level that support the detection and treatment of child abuse and  
17 neglect and enhance the coordination and delivery of services to  
18 children and families.

19 (b) The strategy must include plans to:

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

22 (2) enter into agreements for the establishment or  
23 development of joint offices or workplaces with local officials and  
24 organizations, including:

25 (A) children's advocacy centers;

26 (B) law enforcement officials;

27 (C) prosecutors;



1                   (D) health care providers; and

2                   (E) domestic violence shelters.

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

5                   (1) local legal liaisons who support the prosecution  
6 in each region of legal cases through the judicial system by  
7 improving coordination and cooperation in case consultation and  
8 preparation of cases for court; and

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

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

15           SECTION 1.87. Subchapter C, Chapter 40, Human Resources  
16 Code, is amended by adding Section 40.0528 to read as follows:

17           Sec. 40.0528. COMPREHENSIVE STAFFING AND WORKLOAD  
18 DISTRIBUTION PLAN FOR CHILD PROTECTIVE SERVICES. (a) The  
19 department shall develop and implement a staffing and workload  
20 distribution plan for the child protective services program to:

21                   (1) reduce caseloads;

22                   (2) enhance accountability;

23                   (3) improve the quality of investigations;

24                   (4) eliminate delays; and

25                   (5) ensure the most efficient and effective use of  
26 child protective services staff and resources.

27           (b) In developing and implementing the plan, the department

1 shall, subject to available funds:

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

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

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

11 (4) provide incentives to recruit and retain:

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

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

16 (5) ensure that caseworkers and supervisors who are  
17 not in an investigations unit are paid appropriately to increase  
18 employee retention;

19 (6) when appropriate, identify and use alternative  
20 work schedules;

21 (7) use a system of regional hiring supervisors for  
22 targeted recruitment efforts;

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

26 (9) reduce the time necessary to complete a plan of  
27 service for a child and family when providing family-based safety

1 services; and

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

4 SECTION 1.88. Section 40.058, Human Resources Code, is  
5 amended by adding Subsection (b-1) to read as follows:

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

9 (1) department procurement procedures; or

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

12 SECTION 1.89. Subchapter C, Chapter 40, Human Resources  
13 Code, is amended by adding Sections 40.071, 40.072, and 40.073 to  
14 read as follows:

15 Sec. 40.071. DRUG-ENDANGERED CHILD INITIATIVE. The  
16 department shall establish a drug-endangered child initiative  
17 aimed at protecting children who are exposed to methamphetamine or  
18 to chemicals and other hazardous materials used in the illicit  
19 manufacture of methamphetamine.

20 Sec. 40.072. DUTY TO REPORT; DEPARTMENT RECORDS. (a) To  
21 the extent that reporting does not interfere with an ongoing  
22 criminal investigation, the Department of Public Safety and each  
23 local law enforcement agency shall report to the department on  
24 discovering the presence of a child in a location where  
25 methamphetamine is manufactured.

26 (b) The department shall maintain a record of reports  
27 received under this section and shall include in the record

1 information regarding actions taken by the department to ensure the  
2 child's safety and well-being.

3 Sec. 40.073. PARENTAL ADVISORY COMMITTEE. (a) The  
4 Parental Advisory Committee shall advise the department on policies  
5 affecting parents and their involvement with the department,  
6 including:

- 7 (1) investigations of allegations of abuse or neglect;  
8 (2) designations of alternative placements for  
9 children; and  
10 (3) standards for persons who investigate reports of  
11 abuse or neglect on the state or local level.

12 (b) The Parental Advisory Committee consists of members  
13 appointed by the governor. The governor shall establish:

- 14 (1) the qualifications for committee members;  
15 (2) the terms for committee members; and  
16 (3) the number of committee members.

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

19 (d) A committee member may not receive compensation for  
20 serving on the committee but is entitled to reimbursement of travel  
21 expenses incurred by the member while conducting the business of  
22 the committee as provided by the General Appropriations Act.

23 SECTION 1.90. Section 42.002, Human Resources Code, is  
24 amended by adding Subdivisions (18) and (19) to read as follows:

25 (18) "Controlling person" means a person who, either  
26 alone or in connection with others, has the ability to directly or  
27 indirectly influence or direct the management, expenditures, or

1 policies of a residential child-care facility.

2 (19) "Residential child-care facility" means a  
3 facility licensed or certified by the department to provide  
4 assessment, care, training, education, custody, treatment, or  
5 supervision for a child who is not related by blood, marriage, or  
6 adoption to the owner or operator of the facility, for all of the  
7 24-hour day, whether or not the facility is operated for profit or  
8 charges for the services it offers. The term includes child-care  
9 institutions, child-placing agencies, foster group homes, foster  
10 homes, agency foster group homes, and agency foster homes.

11 SECTION 1.91. Subsections (b) and (d), Section 42.021,  
12 Human Resources Code, are amended to read as follows:

13 (b) The commissioner [~~executive director of the department~~]  
14 shall appoint as director of a division designated under Subsection  
15 (a) a person who meets the qualifications set by the executive  
16 commissioner [~~board~~].

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

19 SECTION 1.92. Subsections (a) and (b), Section 42.023,  
20 Human Resources Code, are amended to read as follows:

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

24 (b) The annual report shall include:

25 (1) a report by regions of applications for licensure  
26 or certification, of initial [~~provisional~~] licenses issued,  
27 denied, or revoked, of licenses issued, denied, suspended or

1 revoked, of emergency closures and injunctions, and of the  
2 compliance of state-operated agencies, if such agencies exist, with  
3 certification requirements;

4 (2) a summary of the training programs required by the  
5 department and their effectiveness [~~amount and kind of in-service~~  
6 ~~training and other professional development opportunities provided~~  
7 ~~for department staff~~];

8 (3) a summary of training and other professional  
9 development opportunities offered to facilities' staffs; [~~and~~]

10 (4) a report of new administrative procedures, of the  
11 number of staff and staff changes, and of plans for the coming year;  
12 and

13 (5) a report of trends in licensing violations on a  
14 statewide and regional basis and the department's plans to address  
15 those trends through the provision of technical assistance.

16 SECTION 1.93. (a) Subsection (c), Section 42.041, Human  
17 Resources Code, is amended to read as follows:

18 (c) A single license that lists addresses and the  
19 appropriate facilities may be issued to a child-care institution  
20 that operates noncontiguous facilities that are across the street  
21 from, in the same city block as, or on the same property as one  
22 another [~~nearby~~] and that are demonstrably a single operation as  
23 indicated by patterns of staffing, finance, administrative  
24 supervision, and programs.

25 (b) Subsection (c), Section 42.041, Human Resources Code,  
26 as amended by this section, applies only to a license issued or  
27 renewed on or after the effective date of this section. A license

1 issued or renewed before the effective date of this section is  
2 governed by the law in effect at the time the license is issued or  
3 renewed, and the former law is continued in effect for that purpose.

4 SECTION 1.94. (a) Section 42.042, Human Resources Code, is  
5 amended by adding Subsections (h-1) and (q) to read as follows:

6 (h-1) The executive commissioner shall adopt rules  
7 governing:

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

11 (2) the verification and monitoring of agency foster  
12 homes, agency foster group homes, and adoptive homes by a  
13 child-placing agency; and

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

16 (q) Each residential child-care facility shall notify the  
17 department and the appropriate local law enforcement agency  
18 immediately on determining that a child is missing from the  
19 facility.

20 (b) As soon as possible after the effective date of this  
21 Act, the executive commissioner of the Health and Human Services  
22 Commission shall adopt rules and establish standards, policies, and  
23 procedures to implement and administer Subsections (h-1) and (q),  
24 Section 42.042, Human Resources Code, as added by this section.

25 SECTION 1.95. Section 42.0426, Human Resources Code, is  
26 amended to read as follows:

27 Sec. 42.0426. TRAINING OF PERSONNEL. (a) A licensed

1 facility shall provide training for staff members in:

2 (1) the recognition of symptoms of child abuse,  
3 neglect, and sexual molestation and the responsibility and  
4 procedure of reporting suspected occurrences of child abuse,  
5 neglect, and sexual molestation to the department or other  
6 appropriate entity;

7 (2) the application of first aid; and

8 (3) the prevention and spread of communicable  
9 diseases.

10 (b) A residential child-care facility shall implement a  
11 behavior intervention program approved by the department for the  
12 benefit of a child served by the facility who needs assistance in  
13 managing the child's conduct. The program must include:

14 (1) behavior intervention instruction for staff  
15 members who work directly with children served by the facility; and

16 (2) training for all employees regarding the risks  
17 associated with the use of prone restraints.

18 SECTION 1.96. Section 42.044, Human Resources Code, is  
19 amended by adding Subsections (e) and (f) to read as follows:

20 (e) The department shall periodically conduct inspections  
21 of a random sample of agency foster homes and agency foster group  
22 homes. The department shall use the inspections to monitor and  
23 enforce compliance by a child-placing agency with rules and  
24 standards established under Section 42.042.

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



1 SECTION 1.97. The heading to Section 42.0441, Human  
2 Resources Code, is amended to read as follows:

3 Sec. 42.0441. INSPECTION RESULTS FOR CERTAIN  
4 NONRESIDENTIAL CHILD-CARE FACILITIES.

5 SECTION 1.98. Subchapter C, Chapter 42, Human Resources  
6 Code, is amended by adding Section 42.04411 to read as follows:

7 Sec. 42.04411. INSPECTION RESULTS AND EXIT CONFERENCE FOR  
8 RESIDENTIAL CHILD-CARE FACILITIES. (a) On completion of an  
9 inspection of a residential child-care facility under Section  
10 42.044, the inspector shall hold an exit conference with a  
11 representative of the inspected facility. The inspector shall  
12 provide to the representative a copy of the inspection checklist  
13 used by the inspector.

14 (b) The inspector shall provide the representative an  
15 opportunity to communicate regarding potential violations.

16 SECTION 1.99. Section 42.046, Human Resources Code, is  
17 amended by adding Subsection (e) to read as follows:

18 (e) The department may deny an application under this  
19 section if the applicant:

20 (1) has a residential child-care facility license  
21 revoked in another state; or

22 (2) is barred from operating a residential child-care  
23 facility in another state.

24 SECTION 1.100. Subsections (f) and (g), Section 42.0461,  
25 Human Resources Code, are amended to read as follows:

26 (f) A child-placing agency that proposes to verify an agency  
27 foster home or agency foster group home that is located in a county

1 with a population of less than 300,000 that provides child care for  
2 24 hours a day at a location other than the actual residence of a  
3 child's primary caretaker shall:

4 (1) comply with the notice and hearing requirements  
5 imposed by Subsections (a) and (b); and

6 (2) after conducting the required public hearing,  
7 provide the department with information relating to the  
8 considerations specified in Subsection (d).

9 (g) The department may prohibit the child-placing agency  
10 from verifying the proposed agency foster home or agency foster  
11 group home on the same grounds that the department may deny an  
12 application under Subsection (e). The department may invalidate  
13 the verification of an agency foster home or agency foster group  
14 home that was not verified using the procedures required by  
15 Subsection (f) on or after September 1, 1997.

16 SECTION 1.101. Section 42.051, Human Resources Code, is  
17 amended to read as follows:

18 Sec. 42.051. INITIAL [~~PROVISIONAL~~] LICENSE. (a) The  
19 department shall issue an initial [~~a provisional~~] license when a  
20 facility's plans meet the department's licensing requirements and  
21 one of the following situations exists:

22 (1) the facility is not currently operating;

23 (2) the facility has relocated and has made changes in  
24 the type of child-care service it provides; or

25 (3) there is a change in ownership of the facility  
26 resulting in changes in policy and procedure or in the staff who  
27 have direct contact with the children.

1 (b) An initial [~~A provisional~~] license is valid for six  
2 months from the date it is issued and may be renewed for an  
3 additional six months.

4 SECTION 1.102. Subsection (b), Section 42.054, Human  
5 Resources Code, is amended to read as follows:

6 (b) The department shall charge each child-care facility a  
7 fee of \$35 for an initial [~~a provisional~~] license. The department  
8 shall charge each child-placing agency a fee of \$50 for an initial  
9 [~~a provisional~~] license.

10 SECTION 1.103. (a) Section 42.056, Human Resources Code,  
11 is amended by adding Subsections (a-1), (d), (e), and (f) and  
12 amending Subsection (b) to read as follows:

13 (a-1) In accordance with rules adopted by the executive  
14 commissioner, the director, owner, or operator of a residential  
15 child-care facility shall submit to the department for use in  
16 conducting background and criminal history checks the name of each  
17 prospective employee who will provide direct care or have direct  
18 access to a child in the residential child-care facility.

19 (b) The department shall conduct background and criminal  
20 history checks using:

21 (1) the information provided under Subsections  
22 [~~Subsection~~] (a) and (a-1);

23 (2) the information made available by the Department  
24 of Public Safety under Section 411.114, Government Code, or by the  
25 Federal Bureau of Investigation or other criminal justice agency  
26 under Section 411.087, Government Code; and

27 (3) the department's records of reported abuse and

1 neglect.

2 (d) A person described by Subsection (a) or (a-1) may not  
3 provide direct care or have direct access to a child in a  
4 residential child-care facility before completion of the person's  
5 background check and criminal history check.

6 (e) If the residential child-care facility does not receive  
7 the results of the background or criminal history check within two  
8 working days, the facility may obtain that information for the  
9 facility's employee, subcontractor, or volunteer directly from the  
10 Department of Public Safety. If the information obtained verifies  
11 that the person does not have a criminal record, the facility may  
12 allow the person to have unsupervised client contact until the  
13 department has performed the department's own criminal history  
14 check and notified the facility.

15 (f) As part of a background check under this section, the  
16 department shall provide any relevant information available in the  
17 department's records regarding a person's previous employment in a  
18 residential child-care facility to the person submitting the  
19 request.

20 (b) The director, owner, or operator of a residential  
21 child-care facility shall begin providing information to the  
22 Department of Family and Protective Services as required by  
23 Subsection (a-1), Section 42.056, Human Resources Code, as added by  
24 this section, as soon as possible after the effective date of this  
25 section and not later than January 1, 2006.

26 SECTION 1.104. (a) Subchapter C, Chapter 42, Human  
27 Resources Code, is amended by adding Section 42.057 to read as

1 follows:

2 Sec. 42.057. DRUG TESTING. (a) Each residential  
3 child-care facility shall establish a drug testing policy for  
4 employees. A residential child-care facility may adopt the model  
5 employee drug testing policy adopted by the executive commissioner  
6 under Subsection (b) or may use another employee drug testing  
7 policy approved by the executive commissioner.

8 (b) The executive commissioner by rule shall adopt a model  
9 employee drug testing policy for use by a residential child-care  
10 facility. The policy must be designed to ensure the safety of  
11 resident children through appropriate drug testing of employees  
12 while protecting the rights of employees. The model policy must  
13 require:

14 (1) preemployment drug testing;

15 (2) random, unannounced drug testing of each employee  
16 who has direct contact with a child in the care of the facility;

17 (3) drug testing of an employee against whom there is  
18 an allegation of drug abuse; and

19 (4) drug testing of an employee whom the department is  
20 investigating for the abuse or neglect of a child in the care of the  
21 facility, if the allegation of abuse or neglect includes  
22 information that provides good cause to suspect drug abuse.

23 (c) The department shall require a drug test of a person who  
24 directly cares for or has access to a child in a residential  
25 child-care facility within 24 hours after the department receives  
26 notice of an allegation that the person has abused drugs.

27 (d) An employee may not provide direct care or have direct

1 access to a child in a residential child-care facility before  
2 completion of the employee's initial drug test.

3 (e) A residential child-care facility shall pay any fee or  
4 cost associated with performing the drug test for an employee.

5 (b) Not later than December 1, 2005, the executive  
6 commissioner of the Health and Human Services Commission shall  
7 adopt the model drug testing policy required by Section 42.057,  
8 Human Resources Code, as added by this section.

9 (c) Not later than January 1, 2006, each residential  
10 child-care facility shall adopt a drug testing policy required by  
11 Section 42.057, Human Resources Code, as added by this section.

12 SECTION 1.105. Subchapter C, Chapter 42, Human Resources  
13 Code, is amended by adding Section 42.062 to read as follows:

14 Sec. 42.062. CERTAIN EMPLOYMENT PROHIBITED. A residential  
15 child-care facility may not employ in any capacity a person who is  
16 not eligible to receive a license or certification for the  
17 operation of a residential child-care facility under Section  
18 42.072(g) or who has been denied a license under Section 42.046.

19 SECTION 1.106. Subchapter C, Chapter 42, Human Resources  
20 Code, is amended by adding Section 42.063 to read as follows:

21 Sec. 42.063. REPORTING OF INCIDENTS AND VIOLATIONS.

22 (a) In this section, "serious incident" means a suspected or  
23 actual incident that threatens or impairs the basic health, safety,  
24 or well-being of a child. The term includes:

25 (1) the arrest, abuse, neglect, exploitation, running  
26 away, attempted suicide, or death of a child;

27 (2) a critical injury of a child; and

1           (3) an illness of a child that requires  
2 hospitalization.

3           (b) A person licensed under this chapter shall report to the  
4 department each serious incident involving a child who receives  
5 services from the person, regardless of whether the department is  
6 the managing conservator of the child.

7           (c) An employee of a person described by Subsection (b)  
8 shall report suspected abuse or neglect directly to the statewide  
9 intake system.

10           (d) An employee or volunteer of a child-care institution,  
11 child-placing agency, foster home, or foster group home shall  
12 report any serious incident directly to the department if the  
13 incident involves a child under the care of the institution,  
14 agency, or home.

15           (e) A foster parent shall report any serious incident  
16 directly to the department if the incident involves a child under  
17 the care of the parent.

18           (f) The executive commissioner by rule shall prescribe:

19                   (1) procedures governing reporting required under  
20 this section; and

21                   (2) the manner in which a report under this section  
22 must be provided.

23           (g) The department shall implement this section using  
24 existing appropriations.

25           SECTION 1.107. Section 42.072, Human Resources Code, is  
26 amended by amending Subsection (c) and adding Subsection (g) to  
27 read as follows:

1           (c) The department may not issue a license, listing,  
2 registration, or certification to a [A] person whose license,  
3 listing, registration, or certification is revoked or whose  
4 application for a license, listing, registration, or certification  
5 is denied for a substantive reason under this chapter [~~may not apply~~  
6 ~~for any license, listing, registration, or certification under this~~  
7 ~~chapter~~] before:

8           (1) the fifth anniversary of the date on which the  
9 revocation takes effect by department or court order or the  
10 decision to deny the application is final, if the facility is a  
11 residential child-care facility; or

12           (2) the second anniversary of the date on which the  
13 revocation takes effect by department or court order or the  
14 decision to deny the application is final, if the facility is not a  
15 residential child-care facility.

16           (g) Notwithstanding Subsection (c), the department may  
17 refuse to issue a license, listing, registration, or certification  
18 to:

19           (1) a person whose license or certification for a  
20 residential child-care facility was revoked by the department or by  
21 court order;

22           (2) a person who was a controlling person of a  
23 residential child-care facility at the time conduct occurred that  
24 resulted in the revocation of the license or certification of the  
25 facility;

26           (3) a person who voluntarily closed a residential  
27 child-care facility or relinquished the person's license or



1 certification after:

2 (A) the department took an action under  
3 Subsection (a) in relation to the facility or person; or

4 (B) the person received notice that the  
5 department intended to take an action under Subsection (a) in  
6 relation to the facility or person; or

7 (4) a person who was a controlling person of a  
8 residential child-care facility at the time conduct occurred that  
9 resulted in the closure of the facility or relinquishment of the  
10 license or certification in the manner described by Subdivision  
11 (3).

12 SECTION 1.108. Subsection (c), Section 42.073, Human  
13 Resources Code, is amended to read as follows:

14 (c) An order is valid for 10 days after the effective date of  
15 the order, except that an order relating to a residential  
16 child-care facility is valid for 30 days after the effective date of  
17 the order.

18 SECTION 1.109. Section 42.077, Human Resources Code, is  
19 amended by adding Subsection (d-1) to read as follows:

20 (d-1) If the department determines that the license of a  
21 residential child-care facility should be revoked or suspended, the  
22 facility shall mail notification of the action or proposed action  
23 by certified mail to a parent of each child served by the facility,  
24 if the person's parental rights have not been terminated, and to the  
25 child's managing conservator, as appropriate. The residential  
26 child-care facility shall mail the notification not later than the  
27 fifth day after the date the facility is notified of the

1 department's determination that revocation or suspension of the  
2 license is appropriate.

3 SECTION 1.110. (a) Section 42.078, Human Resources Code,  
4 is amended by amending Subsections (a) through (i) and (l), (m), and  
5 (n) and adding Subsection (a-1) to read as follows:

6 (a) The department may impose an administrative penalty  
7 against a facility or family home licensed or registered under this  
8 chapter that violates this chapter or a rule or order adopted under  
9 this chapter. In addition, the department may impose an  
10 administrative penalty against a residential child-care facility  
11 or a controlling person of a residential child-care facility if the  
12 facility or controlling person:

13 (1) violates a term of a license or registration  
14 issued under this chapter;

15 (2) makes a statement about a material fact that the  
16 facility or person knows or should know is false:

17 (A) on an application for the issuance or renewal  
18 of a license or registration or an attachment to the application; or

19 (B) in response to a matter under investigation;

20 (3) refuses to allow a representative of the  
21 department to inspect:

22 (A) a book, record, or file required to be  
23 maintained by the facility; or

24 (B) any part of the premises of the facility;

25 (4) purposefully interferes with the work of a  
26 representative of the department or the enforcement of this  
27 chapter; or

1           (5) fails to pay a penalty assessed under this chapter  
 2 on or before the date the penalty is due, as determined under this  
 3 section.

4           (a-1) Nonmonetary, administrative penalties or remedies,  
 5 including but not limited to corrective action plans, probation,  
 6 and evaluation periods, shall be imposed when appropriate before  
 7 monetary penalties.

8           (b) Each day a violation continues or occurs is a separate  
 9 violation for purposes of imposing a penalty. The penalty for a  
 10 violation may be in an amount not to exceed the following limits,  
 11 based on the maximum number of children for whom the facility or  
 12 family home was authorized to provide care or the number of children  
 13 under the care of the child-placing agency when the violation  
 14 occurred [~~receiving care at the facility or family home at the time~~  
 15 ~~of the violation~~]:

16           (1) for violations that occur in a facility other than  
 17 a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	<u>\$50</u> [ <del>\$20</del> ]
21-40	<u>\$60</u> [ <del>\$30</del> ]
41-60	<u>\$70</u> [ <del>\$40</del> ]
61-80	<u>\$80</u> [ <del>\$50</del> ]
81-100	<u>\$100</u> [ <del>\$75</del> ]
More than 100	<u>\$150</u> [ <del>\$100</del> ]

25           (2) for violations that occur in a residential  
 26 child-care facility:

<u>Number of children</u>	<u>Maximum amount of penalty</u>
---------------------------	----------------------------------

1	<u>20 or less</u>	<u>\$100</u>
2	<u>21-40</u>	<u>\$150</u>
3	<u>41-60</u>	<u>\$200</u>
4	<u>61-80</u>	<u>\$250</u>
5	<u>81-100</u>	<u>\$375</u>
6	<u>More than 100</u>	<u>\$500</u>

7 (c) In addition to the number of children, the ~~[The]~~ amount  
8 of the penalty shall be based on:

9 (1) the seriousness of the violation, including the  
10 nature, circumstances, extent, and gravity of any prohibited acts,  
11 and the hazard or potential hazard created to the health, safety, or  
12 economic welfare of the public;

13 (2) the economic harm to property or the environment  
14 caused by the violation;

15 (3) the history of previous violations;

16 (4) the amount necessary to deter future violations;

17 (5) efforts to correct the violation; and

18 (6) any other matter that justice may require.

19 (d) Monetary penalties shall not be assessed for violations  
20 that are the result of clerical errors ~~[or standards which do not~~  
21 ~~clearly apprise the facility or family home of the action required~~  
22 ~~by the standard]~~.

23 (e) If the department ~~[executive director]~~ determines that  
24 a violation has occurred, the department ~~[executive director]~~ may  
25 issue a recommendation on the imposition of a penalty, including a  
26 recommendation on the amount of the penalty.

27 (f) Within 14 days after the date the recommendation is

1 issued, the department [~~executive director~~] shall give written  
2 notice of the recommendation to the person owning or operating the  
3 facility or family home or to the controlling person, if  
4 applicable. The notice may be given by certified mail. The notice  
5 must include a brief summary of the alleged violation and a  
6 statement of the amount of the recommended penalty and must inform  
7 the person that the person has a right to a hearing on the  
8 occurrence of the violation, the amount of the penalty, or both the  
9 occurrence of the violation and the amount of the penalty.

10 (g) Within 20 days after the date the person receives the  
11 notice, the person in writing may accept the determination and  
12 recommended penalty of the department [~~executive director~~] or may  
13 make a written request for a hearing on the occurrence of the  
14 violation, the amount of the penalty, or both the occurrence of the  
15 violation and the amount of the penalty.

16 (h) If the person accepts the determination and recommended  
17 penalty of the department [~~executive director~~] or fails to respond  
18 to the notice in a timely manner, the department [~~executive~~  
19 ~~director~~] shall issue an order and impose the recommended penalty.

20 (i) If the person requests a hearing, the department  
21 [~~executive director~~] shall set a hearing and give notice of the  
22 hearing to the person. The hearing shall be held by an  
23 administrative law judge of the State Office of Administrative  
24 Hearings. The administrative law judge shall make findings of fact  
25 and conclusions of law and issue a final decision finding that a  
26 violation has occurred and imposing a penalty or finding that no  
27 violation occurred.

1           (1) Within the 30-day period, a person who acts under  
2 Subsection (k)(3) may:

3                 (1) stay enforcement of the penalty by:

4                         (A) paying the amount of the penalty to the court  
5 for placement in an escrow account; or

6                         (B) giving to the court a supersedeas bond that  
7 is approved by the court for the amount of the penalty and that is  
8 effective until all judicial review of the order is final; or

9                 (2) request the court to stay enforcement of the  
10 penalty by:

11                         (A) filing with the court a sworn affidavit of  
12 the person stating that the person is financially unable to pay the  
13 amount of the penalty and is financially unable to give the  
14 supersedeas bond; and

15                         (B) giving a copy of the affidavit to the  
16 department [~~executive director~~] by certified mail.

17           (m) On receipt of a copy of an affidavit under Subsection  
18 (1)(2), the department [~~executive director~~] may file with the  
19 court, within five days after the date the copy is received, a  
20 contest to the affidavit. The court shall hold a hearing on the  
21 facts alleged in the affidavit as soon as practicable and shall stay  
22 the enforcement of the penalty on finding that the alleged facts are  
23 true. The person who files an affidavit has the burden of proving  
24 that the person is financially unable to pay the amount of the  
25 penalty and to give a supersedeas bond.

26           (n) If the person does not pay the amount of the penalty and  
27 the enforcement of the penalty is not stayed, the department

1 ~~[executive director]~~ may refer the matter to the attorney general  
2 for collection of the amount of the penalty.

3 (b) Section 42.078, Human Resources Code, as amended by this  
4 section, applies to conduct that occurs on or after the effective  
5 date of this section. Conduct that occurs before the effective date  
6 of this section is governed by Section 42.078, Human Resources  
7 Code, as it existed before amendment by this section, and the former  
8 law is continued in effect for that purpose.

9 SECTION 1.111. The heading to Chapter 43, Human Resources  
10 Code, is amended to read as follows:

11 CHAPTER 43. REGULATION OF CHILD-CARE  
12 AND CHILD-PLACING AGENCY ADMINISTRATORS

13 SECTION 1.112. Section 43.001, Human Resources Code, is  
14 amended by amending Subdivision (1) and adding Subdivisions (3) and  
15 (4) to read as follows:

16 (1) "Child-care institution" has the meaning assigned  
17 by Section 42.002 ~~[means a profit or nonprofit children's home,~~  
18 ~~orphanage, institution, or other place that receives and provides~~  
19 ~~24-hour-a-day care for more than six children who are dependent,~~  
20 ~~neglected, handicapped, delinquent, in danger of becoming~~  
21 ~~delinquent, or in need of group care].~~

22 (3) "Child-placing agency" has the meaning assigned in  
23 Section 42.002.

24 (4) "Child-placing agency administrator" means a  
25 person who supervises and exercises direct control over a  
26 child-placing agency and who is responsible for the child-placing  
27 agency's program and personnel, regardless of whether the person

1 has an ownership interest in the child-placing agency or shares  
2 duties with other persons.

3 SECTION 1.113. (a) Section 43.003, Human Resources Code,  
4 is amended by adding Subsection (c) to read as follows:

5 (c) A person may not serve as a child-placing agency  
6 administrator without a license issued by the department under this  
7 chapter.

8 (b) Notwithstanding Subsection (c), Section 43.003, Human  
9 Resources Code, as added by this section, a person is not required  
10 to hold a license issued under Chapter 43, Human Resources Code, to  
11 act as a child-placing agency administrator until January 1, 2006.

12 SECTION 1.114. (a) Section 43.004, Human Resources Code,  
13 is amended to read as follows:

14 Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) To be  
15 eligible for a child-care administrator's license a person must:

16 (1) provide information for the department's use in  
17 conducting a criminal history and background check under Subsection  
18 (c) [~~present evidence in writing of good moral character, ethical~~  
19 ~~commitment, and sound physical and emotional health~~];

20 (2) pass an examination developed [~~devised~~] and  
21 administered by the department that demonstrates competence in the  
22 field of child-care administration;

23 (3) have one year of full-time experience in  
24 management or supervision of child-care personnel and programs; and

25 (4) have one of the following educational and  
26 experience qualifications:

27 (A) a master's or doctoral [~~doctor of philosophy~~]



1 degree in social work or other area of study; or

2 (B) a bachelor's degree and two years' full-time  
3 experience in child care or a closely related field;

4 [~~(C) an associate degree from a junior college~~  
5 ~~and four years' experience in child care or a closely related field,~~  
6 ~~or~~

7 [~~(D) a high school diploma or its equivalent and~~  
8 ~~six years' experience in child care or a closely related field~~].

9 (b) To be eligible for a child-placing agency  
10 administrator's license a person must:

11 (1) provide information for the department's use in  
12 conducting a criminal history and background check under Subsection  
13 (c);

14 (2) pass an examination developed and administered by  
15 the department that demonstrates competence in the field of placing  
16 children in residential settings or adoptive homes;

17 (3) have one year of full-time experience in  
18 management or supervision of child-placing personnel and programs;  
19 and

20 (4) have one of the following educational and  
21 experience qualifications:

22 (A) a master's or doctoral degree in social work  
23 or other area of study; or

24 (B) a bachelor's degree and two years' full-time  
25 experience in the field of placing children in residential settings  
26 or adoptive homes or a closely related field.

27 (c) Before the department issues a license under this

1 chapter, the department must conduct a criminal history and  
2 background check of the applicant using:

3 (1) the information made available by the Department  
4 of Public Safety under Section 411.114, Government Code, or by the  
5 Federal Bureau of Investigation or other criminal justice agency  
6 under Section 411.087, Government Code; and

7 (2) the information in the central registry of  
8 reported cases of child abuse or neglect established under Section  
9 261.002, Family Code.

10 (b) Except as provided by Subsection (c) of this section,  
11 Subsection (a), Section 43.004, Human Resources Code, as amended by  
12 this section, applies only to a person who applies for a license or  
13 license renewal on or after the effective date of this section.

14 (c) A person who is qualified for a license under Paragraph  
15 (C) or (D), Subdivision (4), Section 43.004, Human Resources Code,  
16 as that section existed prior to the effective date of this section,  
17 and who is licensed or has applied for a license as a child-care  
18 administrator prior to the effective date of this section is  
19 eligible for a child-care administrator license under Subsection  
20 (a), Section 43.004, Human Resources Code, as amended by this  
21 section, or license renewal.

22 SECTION 1.115. (a) Section 43.0041, Human Resources Code,  
23 is amended by adding Subsection (c) to read as follows:

24 (c) A person who fails an examination three times may not  
25 submit a new application for a license until after the first  
26 anniversary of the date the person last failed the examination.

27 (b) Subsection (c), Section 43.0041, Human Resources Code,

1 as added by this section, applies only to an examination taken on or  
2 after the effective date of this section. An examination taken  
3 before the effective date of this section is not considered in  
4 determining whether a person is prohibited from seeking a new  
5 license for the period specified by Subsection (c), Section  
6 43.0041, Human Resources Code, as added by this section.

7 SECTION 1.116. Subsection (a), Section 43.0081, Human  
8 Resources Code, is amended to read as follows:

9 (a) The department may issue a provisional child-care  
10 administrator's license to an applicant licensed in another state  
11 who applies for a license in this state. An applicant for a  
12 provisional license under this section must:

13 (1) be licensed in good standing as a child-care  
14 administrator for at least two years in another state, the District  
15 of Columbia, a foreign country, or a territory of the United States  
16 that has licensing requirements that are substantially equivalent  
17 to the requirements of this chapter;

18 (2) have passed a national or other examination  
19 recognized by the department that demonstrates competence in the  
20 field of child-care administration; and

21 (3) be sponsored by a person licensed by the  
22 department under this chapter with whom the provisional license  
23 holder may practice under this section.

24 SECTION 1.117. (a) Subsection (a), Section 43.009, Human  
25 Resources Code, is amended to read as follows:

26 (a) To be eligible for license renewal, a license holder  
27 shall present evidence to the department of participation in a

1 program of continuing education for 15 [~~approximating 15 actual~~]  
2 hours of formal study each year during the two-year period before  
3 the renewal.

4 (b) Subsection (a), Section 43.009, Human Resources Code,  
5 as amended by this section, applies to a person who seeks license  
6 renewal on or after September 1, 2007. A person who seeks license  
7 renewal before September 1, 2007, is governed by the law in effect  
8 before amendment by this section, and the former law is continued in  
9 effect for that purpose.

10 SECTION 1.118. The heading to Section 43.010, Human  
11 Resources Code, is amended to read as follows:

12 Sec. 43.010. LICENSE DENIAL, REVOCATION, SUSPENSION, OR  
13 REFUSAL TO RENEW; REPRIMAND OR PROBATION.

14 SECTION 1.119. (a) Subsections (a), (b), and (d), Section  
15 43.010, Human Resources Code, are amended to read as follows:

16 (a) The department may deny, [~~shall~~] revoke, suspend, or  
17 refuse to renew a license, or place on probation [~~a person whose~~  
18 ~~license has been suspended,~~] or reprimand a license holder for:

19 (1) violating [~~a violation by the license holder of~~]  
20 this chapter or a rule adopted under this chapter;

21 (2) circumventing or attempting to circumvent the  
22 requirements of this chapter or a rule adopted under this chapter;

23 (3) engaging in fraud or deceit related to the  
24 requirements of this chapter or a rule adopted under this chapter;

25 (4) providing false or misleading information to the  
26 department during the license application or renewal process for  
27 any person's license;

1           (5) making a statement about a material fact during  
2 the license application or renewal process that the person knows or  
3 should know is false;

4           (6) having a criminal history or central registry  
5 record that would prohibit a person from working in a child-care  
6 facility, as defined by Section 42.002, under rules applicable to  
7 that type of facility;

8           (7) using drugs or alcohol in a manner that  
9 jeopardizes the person's ability to function as an administrator;  
10 or

11           (8) [of the board.]

12           ~~[(b) The department may revoke a license if the license~~  
13 ~~holder is:~~

14           ~~[(1) convicted of a felony;~~

15           ~~[(2) convicted of a misdemeanor involving fraud or~~  
16 ~~deceit;~~

17           ~~[(3) addicted to a dangerous drug or intemperate in~~  
18 ~~the use of alcohol; or~~

19           ~~[(4) grossly negligent in]~~ performing duties as a  
20 child-care administrator in a negligent manner.

21           (b) A person whose license is revoked under Subsection (a)  
22 is not eligible to apply for another license under this chapter for  
23 a period of five years after the date the license was revoked.

24           (d) If a license holder is placed on probation ~~[suspension~~  
25 ~~is probated]~~, the department may require the license holder:

26           (1) to report regularly to the department on the  
27 conditions of the probation;

1           (2) to limit practice to the areas prescribed by the  
2 department; or

3           (3) to continue or renew professional education until  
4 the practitioner attains a degree of skill satisfactory to the  
5 department in those areas in which improvement is a condition of the  
6 probation.

7           (b) Subsection (b), Section 43.010, Human Resources Code,  
8 as amended by this section, applies only to a person whose license  
9 is revoked on or after the effective date of this section. A person  
10 whose license is revoked before the effective date of this section  
11 is governed by the law in effect at the time of the revocation, and  
12 the former law is continued in effect for that purpose.

13           SECTION 1.120. Section 43.0105, Human Resources Code, is  
14 amended to read as follows:

15           Sec. 43.0105. REVOCATION OF PROBATION. The department may  
16 revoke the probation of a license holder [~~whose license is~~  
17 ~~suspended~~] if the license holder violates a term of the conditions  
18 of probation.

19           SECTION 1.121. Section 43.0106, Human Resources Code, is  
20 amended to read as follows:

21           Sec. 43.0106. ADMINISTRATIVE [~~DISCIPLINARY~~] HEARING.  
22 (a) If the department denies a license or proposes to suspend,  
23 revoke, or refuse to renew a person's license, the person is  
24 entitled to a hearing conducted by the State Office of  
25 Administrative Hearings. Proceedings for a disciplinary action are  
26 governed by the administrative procedure law, Chapter 2001,  
27 Government Code. Rules of practice adopted by the executive

1 commissioner [~~board~~] under Section 2001.004, Government Code,  
2 applicable to the proceedings for a disciplinary action may not  
3 conflict with rules adopted by the State Office of Administrative  
4 Hearings.

5 (b) A person may not continue to operate as a licensed  
6 child-care administrator or child-placing agency administrator  
7 during the appeal process if the department determines that the  
8 person is an immediate threat to the health or safety of a child.

9 (c) The department must notify the person, and if  
10 applicable, the governing body of the facility that employs the  
11 person, of the department's determination under Subsection (b).

12 SECTION 1.122. Section 43.012, Human Resources Code, is  
13 amended to read as follows:

14 Sec. 43.012. PENALTY. A person who serves as a child-care  
15 or child-placing agency administrator without the license required  
16 by this chapter commits a Class C misdemeanor.

17 SECTION 1.123. Subtitle D, Title 2, Human Resources Code,  
18 is amended by adding Chapter 45 to read as follows:

19 CHAPTER 45. PRIVATIZATION OF SUBSTITUTE CARE AND CASE

20 MANAGEMENT SERVICES

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 45.001. DEFINITIONS. In this chapter:

23 (1) "Case management services" means the provision of  
24 case management services to a child for whom the department has been  
25 appointed temporary or permanent managing conservator, including  
26 caseworker-child visits, family visits, the convening of family  
27 group conferences, the development and revision of the case plan,

1 the coordination and monitoring of services needed by the child and  
2 family, and the assumption of court-related duties, including  
3 preparing court reports, attending judicial hearings and  
4 permanency hearings, and ensuring that the child is progressing  
5 toward permanency within state and federal mandates.

6 (2) "Commission" means the Health and Human Services  
7 Commission.

8 (3) "Department" means the Department of Family and  
9 Protective Services.

10 (4) "Executive commissioner" means the executive  
11 commissioner of the Health and Human Services Commission.

12 (5) "Family-based safety services" means services  
13 designed to help children at risk of being placed in foster care to  
14 remain safely with their families.

15 (6) "Independent administrator" means an independent  
16 agency selected through a competitive procurement process to:

17 (A) secure, coordinate, and manage substitute  
18 care services and case management services in a geographically  
19 designated area of the state; and

20 (B) ensure continuity of care for a child  
21 referred to the administrator by the department and the child's  
22 family from the day a child enters the child protective services  
23 system until the child leaves the system.

24 (7) "Performance-based contracting" means the  
25 structuring of all aspects of the procurement of services around  
26 the purpose of the work to be performed and the desired results with  
27 the contract requirements set forth in clear, specific, and



1 objective terms with measurable outcomes. Contracts may also  
2 include provisions that link the performance of the contractor to  
3 the level and timing of reimbursement.

4 (8) "Permanency services" means services, other than  
5 family-based safety services, provided to secure a child's safety,  
6 permanency, and well-being, including substitute care services,  
7 family reunification services, adoption and postadoption services,  
8 preparation for adult living services, and case management  
9 services.

10 (9) "Placement assessment" means the process used by  
11 the department or another authorized entity to determine the most  
12 appropriate, least restrictive, safe placement resource for a child  
13 who must be separated temporarily from the care of the child's  
14 parents.

15 (10) "Privatize" means to contract with a private  
16 entity to provide certain governmental services.

17 (11) "Psychotropic medication" means a drug that  
18 affects the mind through action on the central nervous system and is  
19 prescribed for depression, schizophrenia, attention deficit  
20 hyperactivity disorder, seizures, and a variety of other similar  
21 conditions.

22 (12) "Substitute care provider" means a child-care  
23 institution or a child-placing agency, as defined by Section  
24 42.002.

25 (13) "Substitute care services" means services  
26 provided to or for children in substitute care and their families,  
27 including the recruitment, training, and management of foster

1 parents, the recruitment of adoptive families, and the facilitation  
2 of the adoption process, family reunification, independent living,  
3 emergency shelter, residential group care, foster care,  
4 therapeutic foster care, and post-placement supervision, including  
5 relative placement. The term does not include the regulation of  
6 facilities under Subchapter C, Chapter 42.

7 Sec. 45.002. PRIVATIZING SUBSTITUTE CARE AND CASE  
8 MANAGEMENT SERVICES; DEPARTMENT DUTIES. (a) Not later than  
9 September 1, 2011, the department shall complete the statewide  
10 privatization of the provision of substitute care and case  
11 management services in this state.

12 (b) On and after September 1, 2011:

13 (1) all substitute care and case management services  
14 for children for whom the department has been appointed temporary  
15 or permanent managing conservator must be provided by child-care  
16 institutions and child-placing agencies;

17 (2) all substitute care and case management service  
18 providers shall, to the best extent possible, honor the cultural  
19 and religious affiliations of a child placed in the service  
20 provider's care, regardless of the religious affiliation of the  
21 service provider; and

22 (3) except as provided by Subsections (d) and (e) and  
23 notwithstanding any other law, the department may not directly  
24 provide substitute care and case management services.

25 (c) On and after September 1, 2011, the department shall:

26 (1) monitor the quality of services for which the  
27 department and each independent administrator contract under this

1 chapter; and

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

6 (d) On and after September 1, 2011, the department may  
7 provide substitute care and case management services in an  
8 emergency. The executive commissioner shall adopt rules describing  
9 the circumstances in which the department may provide those  
10 services.

11 (e) The department may provide substitute care and case  
12 management services as a provider of last resort as provided by  
13 Section 264.106(k), Family Code.

14 Sec. 45.003. HIRING PREFERENCE. A substitute care or case  
15 management services provider that contracts with the department to  
16 provide substitute care or case management services shall:

17 (1) give a preference in hiring to qualified  
18 department employees in good standing with the department who  
19 provide substitute care or case management services and whose  
20 positions with the department may be eliminated as a result of the  
21 privatization of substitute care and case management services; and

22 (2) ensure that each subcontractor with whom the  
23 substitute care or case management services provider contracts for  
24 the provision of substitute care or case management services also  
25 gives a preference in hiring to current and former qualified  
26 department employees whose positions with the department may be or  
27 were eliminated as a result of the privatization of substitute care

1 and case management services.

2 Sec. 45.004. INDEPENDENT ADMINISTRATORS; DEPARTMENT  
3 DUTIES. (a) The department shall research and develop a  
4 comprehensive strategy for contracting for management support  
5 services from independent administrators on a regional basis. If  
6 the department determines that an independent administrator could  
7 manage and procure substitute care and case management services  
8 contracts with private agencies and conduct placement assessments  
9 in a more cost-beneficial manner, the department shall implement a  
10 transition plan to transfer the procurement, management, and  
11 oversight of substitute care and case management services from the  
12 department to an independent administrator, as well as  
13 responsibility for placement assessments. If the department  
14 determines that contracting for management support from an  
15 independent administrator is not cost beneficial, the  
16 privatization of substitute care and case management services will  
17 occur as provided by Section 45.002(b).

18 (b) The comprehensive strategy, at a minimum, must:

19 (1) use competitively procured independent  
20 administrators to procure and manage substitute care and case  
21 management providers in a geographic region designated by the  
22 department;

23 (2) require independent administrators to contract  
24 with private agencies that will:

25 (A) increase local foster and adoptive placement  
26 options for all children, especially teenagers, sibling groups,  
27 children whose race or ethnicity is disproportionately represented

1 in foster care, children with severe or multiple disabilities, and  
2 other children who are difficult to place; and

3 (B) expand efforts to recruit foster families,  
4 adoptive families, and alternative care providers through  
5 faith-based and other targeted recruitment programs; and

6 (3) allow permanency services providers to enter  
7 client, service, and outcome information into the department's  
8 client data system.

9 (c) Subject to the appropriation of funds, the department  
10 shall:

11 (1) enhance existing data systems to include contract  
12 performance information; and

13 (2) implement a contracting data system developed or  
14 procured by the department, to track quality assurance and other  
15 contracting tools to effectively manage, monitor, and evaluate  
16 performance-based contracting functions.

17 [Sections 45.005-45.050 reserved for expansion]

18 SUBCHAPTER B. DEPARTMENT DUTIES

19 Sec. 45.051. REORGANIZING STAFF RESPONSIBILITIES. Not  
20 later than March 1, 2006, the department shall develop a plan for  
21 reorganizing the department's operation to support future  
22 procurement of, contracting with, and monitoring of private  
23 contractors and enforcement of the licensing of facilities. The  
24 plan must include provisions for reducing duplication of the  
25 department's program monitoring activities.

26 Sec. 45.052. FINANCING. The department shall create  
27 financing and payment arrangements that provide incentives for an

1 independent administrator and substitute care and case management  
2 providers to achieve safety, permanency, and well-being outcomes  
3 and improved system performance. In developing this financing  
4 arrangement, the department shall examine:

5 (1) the use of case rates or performance-based  
6 fee-for-service contracts that include incentive payments or  
7 payment schedules that link reimbursement to results; and

8 (2) ways to reduce a contractor's financial risk that  
9 could jeopardize the solvency of the contractor, including the use  
10 of a risk-reward corridor that limits risk of loss and potential  
11 profits or the establishment of a statewide risk pool.

12 Sec. 45.053. ADOPTION OF TRANSITION PLAN. (a) Not later  
13 than September 30, 2005, the commission and the department shall  
14 submit to the legislature a plan for the development of the  
15 transition plan, including the planning structure and process,  
16 engagement of stakeholders, and access to experienced consultation  
17 and technical assistance.

18 (b) Not later than March 1, 2006, the commission and the  
19 department shall, in consultation with private entities under  
20 contract to provide substitute care services for the department,  
21 including members of the boards of directors of the private  
22 entities and other community stakeholders, develop and adopt a  
23 substitute care and case management services transition plan  
24 consistent with the requirements of Subchapter C.

25 (c) The executive commissioner shall adopt rules to  
26 implement the privatization of substitute care and case management  
27 services in this state.

1       Sec. 45.054. REGIONAL IMPLEMENTATION. (a) The department  
2 shall implement the privatization of substitute care and case  
3 management services on a regional basis in accordance with the  
4 transition plan. The transition plan must include a schedule with  
5 deadlines for implementation of the plan. Subject to the  
6 requirements of Subsections (c), (d), and (e), statewide  
7 implementation of the plan shall be completed not later than  
8 September 1, 2011. The commission shall propose the first three  
9 regions of the state for implementation of privatization based on  
10 state demographics and shall consider including a rural region, a  
11 metropolitan region, and a region including border areas of the  
12 state.

13       (b) The transition plan must include a schedule with the  
14 following deadlines for implementation of the plan:

15               (1) completion of the transition plan, not later than  
16 March 1, 2006;

17               (2) release of a request for proposal for a geographic  
18 region of the state designated by the department, not later than  
19 April 30, 2006;

20               (3) the awarding of the contract described by  
21 Subdivision (2), not later than September 30, 2006;

22               (4) establishment of the multidisciplinary team and  
23 necessary processes, evaluation criteria, and monitoring tools to  
24 be used to monitor and evaluate the performance of the contractor,  
25 not later than September 30, 2006;

26               (5) completion of the transition of substitute care  
27 and case management services in the first region, not later than

1 December 31, 2007;

2 (6) the review and evaluation of the multidisciplinary  
3 team's reports pertaining to the contractor's achievement of  
4 performance-based milestones and the effect on the quality of  
5 permanency services provided, annually beginning December 31,  
6 2007;

7 (7) completion of the transition of substitute care  
8 and case management services in the second and third regions, not  
9 later than December 1, 2009; and

10 (8) completion of the statewide implementation of  
11 contracted substitute care and case management services for  
12 additional geographic regions, not later than September 1, 2011.

13 (c) Not later than the first anniversary of the date the  
14 department enters into the first contract for substitute care and  
15 case management services under this section, the department shall  
16 contract with a qualified, independent third party to evaluate each  
17 phase of the privatization of substitute care and case management  
18 services. Each evaluation must:

19 (1) assess the performance of substitute care and case  
20 management services based on compliance with defined quality  
21 outcomes for children;

22 (2) assess the achievement of performance measures;

23 (3) compare for quality the performance of substitute  
24 care and case management services provided by contractors to  
25 substitute care and case management services provided by the  
26 department in similar regions;

27 (4) determine if contracted services are cost



1 beneficial; and

2 (5) assess the private sector's ability to meet the  
3 performance measures, including service capacity, for the  
4 remaining regions.

5 (d) The independent third party with whom the department  
6 contracts under Subsection (c) shall submit its reports and  
7 recommendations to the House Human Services Committee, or its  
8 successor, and the Senate Health and Human Services Committee, or  
9 its successor.

10 (e) The department shall continue to implement the  
11 transition plan for the second and third regions only after:

12 (1) the commission reports to the House Human Services  
13 Committee, or its successor, and the Senate Health and Human  
14 Services Committee, or its successor, the status of the initial  
15 transition of services to a contractor in the first region not later  
16 than December 31, 2006;

17 (2) the independent third party with whom the  
18 department contracts under Subsection (c) evaluates and reports to  
19 the House Human Services Committee, or its successor, and the  
20 Senate Health and Human Services Committee, or its successor, on  
21 the performance of contracted substitute care and case management  
22 services in the first region not later than December 31, 2008; and

23 (3) the commission determines, based on the report  
24 prepared under Subdivision (2) or information obtained by the  
25 review required under Subsection (b)(6), whether material  
26 modifications to the model for privatization of substitute care and  
27 case management services are necessary and submits a report and

1 recommendations to the House Human Services Committee, or its  
2 successor, and the Senate Health and Human Services Committee, or  
3 its successor, not later than December 31, 2008.

4 (f) The department may not implement the transition plan for  
5 the second and third regions before September 1, 2009.

6 (g) The department shall continue to implement the  
7 transition plan for the remaining regions of the state only after:

8 (1) the independent third party with whom the  
9 department contracts under Subsection (c) evaluates and reports to  
10 the House Human Services Committee, or its successor, and the  
11 Senate Health and Human Services Committee, or its successor, on  
12 the performance of contracted substitute care and case management  
13 services in the second and third regions not later than September 1,  
14 2010; and

15 (2) the commission determines, based on the report  
16 prepared under Subdivision (1) or information obtained by the  
17 review required under Subsection (b)(6), whether material  
18 modifications to the model for privatization of substitute care and  
19 case management services are necessary and submits a report and  
20 recommendations to the House Human Services Committee, or its  
21 successor, and the Senate Health and Human Services Committee, or  
22 its successor, not later than December 31, 2010.

23 (h) Nothing in this chapter, including the deadlines for  
24 implementing this section, precludes the department from  
25 immediately converting from an open-enrollment system to a  
26 statewide competitive procurement system for substitute care.

27 [Sections 45.055-45.100 reserved for expansion]

1                   SUBCHAPTER C. TRANSITION PLAN

2           Sec. 45.101. GOALS FOR PRIVATIZATION. The transition plan  
3 adopted under Section 45.053 must provide for a new structural  
4 model for the community-centered delivery of substitute care and  
5 case management services that is based on a goal of improving  
6 protective services, achieving timely permanency for children in  
7 substitute care, including family reunification, placement with a  
8 relative, or adoption, and improving the overall well-being of  
9 children in substitute care consistent with federal and state  
10 mandates.

11           Sec. 45.102. TRANSITION PLAN REQUIREMENTS. The transition  
12 plan developed by the department and the commission must:

13                   (1) identify barriers to privatization, including  
14 regional disparities in resources, provider capacity, and  
15 population, and propose solutions to stimulate capacity and adjust  
16 program delivery;

17                   (2) provide details regarding the target population  
18 and services by region that will be part of the system redesign,  
19 including the number of children and families, historic caseload  
20 trends and service utilization information, and projected  
21 caseloads;

22                   (3) provide details regarding the roles,  
23 responsibilities, and authority assigned to the public and private  
24 entities, including the department, independent administrators,  
25 and substitute care and case management providers, in making key  
26 decisions throughout the child and family case;

27                   (4) include an implementation plan to transfer all

1 foster homes certified by the department to private child-placing  
2 agencies, ensuring minimum disruption to the children in foster  
3 care and to current foster parents;

4 (5) specify the limited circumstances under which a  
5 foster home verified by the department may continue to be verified  
6 by the department when continuation would be in the best interest of  
7 a child in the care of the foster home;

8 (6) include a process for assessing each child who is  
9 transferred to a private substitute care provider to verify the  
10 child's service needs;

11 (7) include an implementation plan to transfer all  
12 adoption services to private agencies, including details of how and  
13 when cases will be transferred and how adoption provider contracts  
14 and reimbursements methods will be structured;

15 (8) describe the process to transfer the duties of  
16 case management and family reunification services from department  
17 staff to private agency staff, including the integration of family  
18 group conferencing into private agency case management;

19 (9) describe the manner in which the department will  
20 procure and contract for kinship services that are funded by the  
21 state;

22 (10) provide details regarding financial arrangements  
23 and performance expectations for independent administrators and  
24 substitute care and case management providers that:

25 (A) provide incentives for desired results and  
26 explicit contract performance and outcome indicators;

27 (B) describe how various risk-based arrangements

1 will be weighed and realistically assessed using sound actuarial  
2 data and risk modeling and how mechanisms will be selected to limit  
3 uncontrollable risks that could threaten provider stability and  
4 quality;

5 (C) describe how financing options will increase  
6 flexibility to promote innovation and efficiency in service  
7 delivery; and

8 (D) provide balance between control over key  
9 decisions and the level of risk the contractor assumes;

10 (11) require the executive commissioner to evaluate  
11 whether existing rate structures are appropriate to compensate  
12 substitute care providers who enter into contracts with an  
13 independent administrator under Section 264.106, Family Code,  
14 considering new functions to be served by the providers, and, if  
15 necessary, require the executive commissioner to adjust the rates  
16 accordingly;

17 (12) require the department to enter into contracts  
18 for the provision of substitute care and case management services  
19 as required by Section 264.106, Family Code, and describe the  
20 procurement and contracting process, including:

21 (A) stating how the department will shift from an  
22 open-enrollment system to a competitive procurement system;

23 (B) identifying the services that will be  
24 procured and contracted for directly with the department and the  
25 services that will be procured by an independent administrator; and

26 (C) developing a procurement and contracting  
27 schedule to ensure full implementation not later than September 1,

1 2011;

2 (13) provide for the implementation of Sections  
3 264.1062 and 264.107, Family Code, by describing each party's  
4 responsibility and ensuring that the department retains the legal  
5 authority to effectively provide oversight;

6 (14) describe formal training required for department  
7 staff, independent administrators, and substitute care and case  
8 management providers;

9 (15) define roles and expectations related to  
10 reporting and managing data required to ensure quality services and  
11 meet state and federal requirements, including data collection  
12 responsibilities for an independent administrator and service  
13 provider;

14 (16) describe how the transition will impact the  
15 state's ability to obtain federal funding and examine options to  
16 further maximize federal funding opportunities and increased  
17 flexibility; and

18 (17) describe the costs of the transition, the initial  
19 start-up costs, and mechanisms to periodically assess the overall  
20 adequacy of funds and the fiscal impact of the change.

21 [Sections 45.103-45.150 reserved for expansion]

22 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

23 Sec. 45.151. PROHIBITION ON CERTAIN CONTRACTS. (a) The  
24 department may not accept a bid under this chapter from a person or  
25 award to a person a contract under this chapter that includes  
26 proposed financial participation by the person if:

27 (1) the person participated in preparing the bid

1 specifications or request for proposals on which the bid or  
2 contract is based; and

3 (2) the bid specifications or request for proposals on  
4 which the bid or contract is based:

5 (A) requires a work plan, project design, or  
6 other criteria for participation in the contract that is specific  
7 to that person or likely to limit or exclude competitors who provide  
8 similar goods or services; or

9 (B) includes a scope of required goods or  
10 services that is so narrowly defined that it is specific to that  
11 person or likely to limit or exclude competitors who provide  
12 similar goods or services.

13 (b) The department may not accept a bid under this chapter  
14 from or award a contract under this chapter to an individual or  
15 business entity that is barred from participating in state  
16 contracts under Section 2155.077, Government Code.

17 (c) The department may not accept a bid under this chapter  
18 from or award a contract under this chapter to an individual or  
19 business entity that was awarded a contract valued at \$1 billion or  
20 more during the four-year period immediately before the date of the  
21 issuance of relevant requests for proposals under Section 45.054.

22 (d) If the department determines that an individual or  
23 business entity holding a contract under this chapter was  
24 ineligible to have the contract accepted or awarded under  
25 Subsection (a), (b), or (c), the department may immediately  
26 terminate the contract without further obligation to the vendor.

27 Sec. 45.152. SUBCONTRACTOR PAYMENT. The existence of a

1 dispute between the department and a contractor regarding a  
2 contract under this chapter does not justify nonpayment of a  
3 subcontractor for work completed by the subcontractor under the  
4 contract if the subcontractor has completed the work in a  
5 satisfactory manner and the work has been approved by the  
6 department and the contractor.

7 Sec. 45.153. EXPIRATION. This chapter expires September 1,  
8 2012.

9 SECTION 1.124. Section 21.01, Penal Code, is amended by  
10 adding Subdivision (4) to read as follows:

11 (4) "Spouse" means a person to whom a person is legally  
12 married under Subtitle A, Title 1, Family Code, or a comparable law  
13 of another jurisdiction.

14 SECTION 1.125. (a) Section 22.04, Penal Code, is amended  
15 by adding Subsection (a-1) and amending Subsections (b) through (g)  
16 to read as follows:

17 (a-1) A person commits an offense if the person is an owner,  
18 operator, or employee of a group home, nursing facility, assisted  
19 living facility, intermediate care facility for persons with mental  
20 retardation, or other institutional care facility and the person  
21 intentionally, knowingly, recklessly, or with criminal negligence  
22 by omission causes to a child, elderly individual, or disabled  
23 individual who is a resident of that group home or facility:

24 (1) serious bodily injury;

25 (2) serious mental deficiency, impairment, or injury;

26 (3) bodily injury; or

27 (4) exploitation.



1 (b) An omission that causes a condition described by  
2 Subsection (a)(1), (2), or (3) or (a-1)(1), (2), (3), or (4)  
3 ~~[Subsections (a)(1) through (a)(3)]~~ is conduct constituting an  
4 offense under this section if:

5 (1) the actor has a legal or statutory duty to act; or

6 (2) the actor has assumed care, custody, or control of  
7 a child, elderly individual, or disabled individual.

8 (c) In this section:

9 (1) "Child" means a person 14 years of age or younger.

10 (2) "Elderly individual" means a person 65 years of  
11 age or older.

12 (3) "Disabled individual" means a person older than 14  
13 years of age who by reason of age or physical or mental disease,  
14 defect, or injury is substantially unable to protect himself from  
15 harm or to provide food, shelter, or medical care for himself.

16 (4) "Exploitation" means the illegal or improper use  
17 of an individual or of the resources of the individual for monetary  
18 or personal benefit, profit, or gain.

19 (d) For purposes of an omission that causes a condition  
20 described by Subsection (a)(1), (2), or (3), the ~~[The]~~ actor has  
21 assumed care, custody, or control if he has by act, words, or course  
22 of conduct acted so as to cause a reasonable person to conclude that  
23 he has accepted responsibility for protection, food, shelter, and  
24 medical care for a child, elderly individual, or disabled  
25 individual. For purposes of an omission that causes a condition  
26 described by Subsection (a-1)(1), (2), (3), or (4), the actor  
27 acting during the actor's capacity as owner, operator, or employee

1 of a group home or facility described by Subsection (a-1) is  
2 considered to have accepted responsibility for protection, food,  
3 shelter, and medical care for the child, elderly individual, or  
4 disabled individual who is a resident of the group home or facility.

5 (e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or  
6 (2) is a felony of the first degree when the conduct is committed  
7 intentionally or knowingly. When the conduct is engaged in  
8 recklessly, the offense is ~~[it shall be]~~ a felony of the second  
9 degree.

10 (f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is  
11 a felony of the third degree when the conduct is committed  
12 intentionally or knowingly. When the conduct is engaged in  
13 recklessly, the offense is ~~[it shall be]~~ a state jail felony.

14 (g) An offense under Subsection (a) is a state jail felony  
15 when the person acts with criminal negligence ~~[shall be a state jail~~  
16 ~~felony]~~. An offense under Subsection (a-1) is a state jail felony  
17 when the person, with criminal negligence and by omission, causes a  
18 condition described by Subsection (a-1)(1), (2), (3), or (4).

19 (b) The change in law made by this section applies only to an  
20 offense committed on or after the effective date of this section.  
21 An offense committed before the effective date of this section is  
22 covered by the law in effect when the offense was committed, and the  
23 former law is continued in effect for that purpose. For the  
24 purposes of this subsection, an offense was committed before the  
25 effective date of this section if any element of the offense was  
26 committed before that date.

27 SECTION 1.126. 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 1.127. (a) Subchapter A, Chapter 102, Code of  
8 Criminal Procedure, is amended by adding Article 102.0186 to read  
9 as follows:

10 Art. 102.0186. ADDITIONAL COSTS ATTENDANT TO CERTAIN CHILD  
11 SEXUAL ASSAULT AND RELATED CONVICTIONS. (a) A person convicted of  
12 an offense under Section 21.11, 22.011(a)(2), 22.021(a)(1)(B),  
13 43.25, 43.251, or 43.26, Penal Code, shall pay \$100 on conviction of  
14 the offense.

15 (b) Costs imposed under this article are imposed without  
16 regard to whether the defendant is placed on community supervision  
17 after being convicted of the offense or receives deferred  
18 adjudication for the offense.

19 (c) The clerks of the respective courts shall collect the  
20 costs and pay them to the county treasurer or to any other official  
21 who discharges the duties commonly delegated to the county  
22 treasurer for deposit in a fund to be known as the county child  
23 abuse prevention fund. A fund designated by this subsection may be  
24 used only to fund child abuse prevention programs in the county  
25 where the court is located.

26 (d) The county child abuse prevention fund shall be  
27 administered by or under the direction of the commissioners court.

1           (b) The change in law made by this section applies only to an  
2 offense committed on or after the effective date of this section.  
3 An offense committed before the effective date of this section is  
4 covered by the law in effect when the offense was committed, and the  
5 former law is continued in effect for that purpose. For purposes of  
6 this section, an offense was committed before the effective date of  
7 this section if any element of the offense was committed before that  
8 date.

9           SECTION 1.128. TRAINING FOR CHILD PROTECTIVE SERVICES.

10          (a) In this section:

11                 (1) "Commission" means the Health and Human Services  
12 Commission.

13                 (2) "Health and human services agencies" has the  
14 meaning assigned by Section 531.001, Government Code.

15                 (3) "Training for child protective services" means  
16 training administered by a state agency or an institution of higher  
17 education that is provided to individuals working or interested in  
18 working in the field of child protective services and that is  
19 intended to assist the individuals in performing that work more  
20 effectively or efficiently.

21          (b) The commission shall study the feasibility of providing  
22 a financial incentive to individuals to assist the individuals in  
23 receiving training for child protective services.

24          (c) The study must:

25                 (1) consider the feasibility of creating a private  
26 foundation to solicit and receive money that will be used to assist  
27 those individuals;

1           (2) consider possible means of providing a financial  
2 incentive, including educational or living stipends or  
3 reimbursement of tuition costs, to assist those individuals and  
4 determine the most effective means to deliver the incentives;

5           (3) suggest criteria that those individuals must meet  
6 to receive the financial incentives;

7           (4) estimate the initial cost and annual cost to this  
8 state of providing the financial incentives to those individuals;  
9 and

10          (5) estimate the savings and costs associated with  
11 improved training of those individuals that may result from  
12 providing the financial incentives.

13          (d) In conducting the study under Subsection (b) of this  
14 section, the commission may cooperate as necessary with any  
15 appropriate state agency.

16          (e) Not later than September 1, 2006, the commission shall  
17 report the results of the study to the standing committees of the  
18 senate and house of representatives with primary jurisdiction over  
19 health and human services programs or appropriations.

20          SECTION 1.129. REPEALER. The following provisions of the  
21 Human Resources Code are repealed:

- 22           (1) Subdivision (1), Section 40.001;
- 23           (2) Section 40.028;
- 24           (3) Section 40.029;
- 25           (4) Subsections (b) and (c), Section 40.0305; and
- 26           (5) Subsection (c), Section 43.010.

ARTICLE 2. ADULT PROTECTIVE SERVICES

SECTION 2.01. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0315 to read as follows:

Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE SERVICES. (a) The adult protective services division of the department shall maintain an investigation unit to investigate allegations of abuse, neglect, and exploitation of elderly and disabled persons reported to the division.

(b) An investigator in the unit shall determine whether an elderly or disabled person who is the subject of a report made under Section 48.051(a) may have suffered from abuse, neglect, or exploitation as a result of the criminal conduct of another person. If the investigator determines that criminal conduct may have occurred, the investigator shall immediately notify the appropriate law enforcement agency.

SECTION 2.02. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Sections 40.0322 and 40.0323 to read as follows:

Sec. 40.0322. QUALIFICATIONS FOR ADULT PROTECTIVE SERVICES PERSONNEL; RECRUITMENT. (a) In hiring department employees whose duties include providing services as part of, or relating to, the provision of adult protective services directly to an elderly or disabled person, the commissioner shall ensure that the department hires, as often as possible, persons with professional credentials related to adult protective services, including persons who are licensed master social workers, as defined by Section 505.002, Occupations Code, or licensed professional counselors.

1        (b) Subject to the availability of funds, the executive  
2 commissioner by rule shall develop and the department shall  
3 implement a recruiting program designed to attract and retain for  
4 employment in the adult protective services division persons with  
5 professional credentials described by Subsection (a).

6        (c) Subject to the availability of funds, the executive  
7 commissioner by rule shall develop and the department shall  
8 implement an incentive program to encourage each department  
9 employee whose duties include the duties described by Subsection  
10 (a) to obtain professional credentials described by that subsection  
11 if the employee does not have those credentials.

12        Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND  
13 CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to  
14 the availability of funds, the department and the Texas Higher  
15 Education Coordinating Board jointly shall develop strategies to:

16                (1) promote certificate or degree programs in the  
17 fields of social work and psychology to individuals enrolled in or  
18 admitted to institutions of higher education in this state; and

19                (2) ensure that persons receiving a certificate or  
20 degree, including a graduate degree, in social work or psychology  
21 from an institution of higher education in this state have the  
22 knowledge and skills regarding protective services that are  
23 provided directly to elderly or disabled persons and necessary for  
24 successful employment by the adult protective services division of  
25 the department.

26        SECTION 2.03. Subchapter B, Chapter 40, Human Resources  
27 Code, is amended by adding Section 40.035 to read as follows:

1       Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE  
2 SERVICES; CONTINUING EDUCATION. (a) The department shall develop  
3 and implement a training program that each newly hired or assigned  
4 department employee must complete before:

5           (1) initiating an investigation of a report of alleged  
6 abuse, neglect, or exploitation of an elderly or disabled person  
7 under Chapter 48; or

8           (2) providing protective services to elderly or  
9 disabled persons under that chapter.

10       (b) The training program must:

11           (1) provide the person with appropriate comprehensive  
12 information regarding:

13                   (A) the incidence and types of reports of abuse,  
14 neglect, and exploitation of elderly or disabled persons that are  
15 received by the department, including information concerning false  
16 reports; and

17                   (B) the use and proper implementation of:

18                           (i) the risk assessment criteria developed  
19 under Section 48.004;

20                           (ii) the criteria used by caseworkers to  
21 determine whether elderly or disabled persons lack capacity to  
22 consent to receive protective services; and

23                           (iii) the legal procedures available under  
24 Chapter 48 for the protection of elderly or disabled persons,  
25 including the procedures for obtaining a court order for emergency  
26 protective services under Section 48.208;

27           (2) include best practices for management of a case



1 from the intake process to the provision of protective services,  
2 including criteria that specify the circumstances under which an  
3 employee should:

4 (A) consult a supervisor regarding a case; or

5 (B) refer an elderly or disabled person to an  
6 appropriate public agency or community service provider for  
7 guardianship or other long-term services after the delivery of  
8 protective services to that person has been completed;

9 (3) provide appropriate specialized training in any  
10 necessary topics, including:

11 (A) investigation of suspected identity theft  
12 and other forms of financial exploitation and suspected  
13 self-neglect; and

14 (B) establishment and maintenance of working  
15 relationships with community organizations and other local  
16 providers who provide services to elderly and disabled persons;

17 (4) include on-the-job training, which must require  
18 another department caseworker with more experience to accompany and  
19 train the caseworker in the field;

20 (5) provide for the development of individualized  
21 training plans;

22 (6) include training in working with law enforcement  
23 agencies and the court system when legal intervention is sought for  
24 investigations or emergency orders;

25 (7) to the maximum extent possible, include nationally  
26 recognized best practices in addition to the best practices  
27 required under Subdivision (2); and

1           (8) include testing, progress reports, or other  
2 evaluations to assess the performance of trainees.

3           (c) The department at least annually shall provide  
4 comprehensive case management training to supervisors of  
5 department employees who conduct investigations under Chapter 48.  
6 The training must be designed to enable the supervisors to provide  
7 guidance on investigations of reports of alleged abuse, neglect, or  
8 exploitation that are complex or present unique problems.

9           (d) The department shall develop and implement appropriate  
10 continuing education programs for employees of the adult protective  
11 services division who have completed initial training under this  
12 section. The continuing education programs must include nationally  
13 recognized best practices to the maximum extent possible and must  
14 be designed to provide an annual update regarding changes in:

15           (1) adult protective services division policies and  
16 procedures; and

17           (2) applicable law, including statutory changes  
18 affecting the adult protective services division or elderly or  
19 disabled persons served by the division.

20           (e) A department employee required to participate in a  
21 continuing education program under this section must complete the  
22 program at least once each calendar year.

23           (f) The department shall:

24           (1) make curriculum developed for a training or  
25 continuing education program under this section readily available  
26 to department employees in written form; and

27           (2) periodically revise a training and continuing

1 education program established under this section as necessary to  
2 satisfy training needs identified by the department or department  
3 employees.

4 (g) The circumstances specified under Subsection (b)(2)  
5 under which an employee should consult a supervisor regarding a  
6 case must be consistent with the risk assessment criteria developed  
7 under Section 48.004 that require consultation with a supervisor.

8 (h) The executive commissioner by rule shall provide  
9 policies and procedures by which the department incorporates  
10 examples of actual cases investigated by the department in the  
11 training programs under this section for use as training tools.

12 (i) In implementing the training program and continuing  
13 education programs under this section, the department, to the  
14 maximum extent possible, shall contract with persons who are not  
15 department employees to conduct the programs.

16 SECTION 2.04. (a) Subchapter C, Chapter 40, Human  
17 Resources Code, is amended by adding Section 40.0515 to read as  
18 follows:

19 Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT  
20 PROTECTIVE SERVICES; QUARTERLY REPORTS. (a) The department shall  
21 develop and implement a quality assurance program for adult  
22 protective services provided by or on behalf of the department.

23 (b) In developing the program, the department shall  
24 establish:

25 (1) client-centered outcome measures for each of the  
26 following functions of the adult protective services program:

27 (A) intake process;

1           (B) investigations;

2           (C) risk assessment determinations; and

3           (D) delivery of protective services;

4           (2) minimum job performance standards for personnel  
5 and each work department of the adult protective services division  
6 of the department; and

7           (3) procedures for conducting periodic performance  
8 reviews to monitor compliance with the standards established under  
9 Subdivision (2), which must include requirements that, for each  
10 caseworker in the adult protective services division of the  
11 department, a supervisor shall conduct:

12           (A) at least two performance reviews each year,  
13 if the employee has less than two years of adult protective services  
14 casework experience; and

15           (B) at least one performance review each year, if  
16 the employee has at least two years of adult protective services  
17 casework experience.

18           (c) The department shall promptly address a person's or work  
19 department's failure to meet minimum job performance standards  
20 established under Subsection (b)(2):

21           (1) by issuing to the person or work department, as  
22 appropriate, a corrective action plan detailing the actions  
23 required to comply with the standards; or

24           (2) if necessary, through disciplinary action,  
25 including a person's demotion or discharge, for repeated failure to  
26 meet the standards.

27           (d) A performance review conducted under Subsection (b)(3)

1 is considered a performance evaluation for purposes of Section  
2 40.032(c). The department shall ensure that disciplinary or other  
3 corrective action is taken against a supervisor or other managerial  
4 employee who is required to conduct a performance evaluation under  
5 Section 40.032(c) or a performance review under Subsection (b)(3)  
6 and who fails to complete that evaluation or review in a timely  
7 manner.

8 (e) The annual performance evaluation required under  
9 Section 40.032(c) of the performance of a supervisor in the adult  
10 protective services division must:

11 (1) be performed by an appropriate program  
12 administrator; and

13 (2) include:

14 (A) an evaluation of the supervisor with respect  
15 to the job performance standards applicable to the supervisor's  
16 assigned duties; and

17 (B) an evaluation of the supervisor with respect  
18 to the compliance of employees supervised by the supervisor with  
19 the job performance standards applicable to those employees'  
20 assigned duties.

21 (f) A summary of the findings of outcome measures  
22 established and performance reviews conducted under this section  
23 must be reported to regional directors and other senior management  
24 employees of the adult protective services division.

25 (g) Each fiscal quarter the department shall file with the  
26 governor and the presiding officer of each house of the legislature  
27 a report that includes:

1           (1) a comprehensive review of the adult protective  
2 services division's overall performance during the preceding  
3 quarter; and

4           (2) a summary of the adult protective services  
5 division's performance during the preceding quarter on each of the  
6 outcome measures established under Subsection (b)(1).

7           (b) The Department of Family and Protective Services shall  
8 submit the initial report required under Section 40.0515, Human  
9 Resources Code, as added by this section, not later than February 1,  
10 2006.

11           SECTION 2.05. Subchapter C, Chapter 40, Human Resources  
12 Code, is amended by adding Section 40.0527 to read as follows:

13           Sec. 40.0527. PUBLIC AWARENESS. (a) Subject to the  
14 availability of funds, the executive commissioner by rule shall  
15 develop and the department shall implement a statewide public  
16 awareness campaign designed to educate the public regarding the  
17 abuse, neglect, and exploitation of elderly and disabled persons.

18           (b) The department may use mass communications media, the  
19 Internet, publications, or other means of public education in  
20 conducting the campaign.

21           (c) A public awareness strategy implemented for the program  
22 must include:

23           (1) the provision of information on the incidence and  
24 types of reports of abuse, neglect, and exploitation of elderly or  
25 disabled persons; and

26           (2) practices that can reduce the incidences of abuse,  
27 neglect, and exploitation of elderly or disabled persons in this

1 state.

2 (d) The department shall enlist the support and assistance  
3 of civic, philanthropic, and public service organizations in the  
4 performance of the duties imposed under this section.

5 SECTION 2.06. Subchapter A, Chapter 48, Human Resources  
6 Code, is amended by adding Section 48.004 to read as follows:

7 Sec. 48.004. RISK ASSESSMENT. The executive commissioner  
8 by rule shall develop and maintain risk assessment criteria for use  
9 by department personnel in determining whether an elderly or  
10 disabled person is in imminent risk of abuse, neglect, or  
11 exploitation or in a state of abuse, neglect, or exploitation and  
12 needs protective services. The criteria must:

13 (1) provide for a comprehensive assessment of the  
14 person's:

15 (A) environmental, physical, medical, mental  
16 health, and financial condition;

17 (B) social interaction and support; and

18 (C) need for legal intervention; and

19 (2) specify the circumstances under which a caseworker  
20 must consult with a supervisor regarding a case.

21 SECTION 2.07. Subchapter A, Chapter 48, Human Resources  
22 Code, is amended by adding Sections 48.005 and 48.006 to read as  
23 follows:

24 Sec. 48.005. MAINTENANCE OF RECORDS. Notwithstanding  
25 Chapter 441, Government Code, or any other law, and subject to the  
26 availability of funds, the department shall maintain in an  
27 electronic format a summary of all records related to

1 investigations of reports made under Section 48.051 that includes  
2 only critical information with respect to those investigations that  
3 will enable the department to research the history of a person's  
4 involvement in the investigated cases.

5 Sec. 48.006. COMMUNITY SATISFACTION SURVEY. (a) Subject  
6 to the availability of funds, the department shall develop a  
7 community satisfaction survey that solicits information regarding  
8 the department's performance with respect to providing  
9 investigative and adult protective services. In each region, the  
10 department shall send the survey at least annually to:

11 (1) stakeholders in the adult protective services  
12 system, including local law enforcement agencies and prosecutors'  
13 offices;

14 (2) protective services agencies, including nonprofit  
15 agencies; and

16 (3) courts with jurisdiction over probate matters.

17 (b) The department shall send the results of each region's  
18 survey to:

19 (1) the region for evaluation by regional and program  
20 administrators and implementation of changes necessary to address  
21 community concerns;

22 (2) the presiding judge of the statutory probate  
23 courts in that region; and

24 (3) courts with jurisdiction over probate matters in  
25 that region.

26 (c) The department may not include any confidential  
27 information in the results of the survey provided under Subsection



1 (b)(2) or (3) unless ordered by a court.

2 SECTION 2.08. Section 48.051, Human Resources Code, is  
3 amended by adding Subsection (e) to read as follows:

4 (e) If a person who makes a report under this section  
5 chooses to give self-identifying information, the caseworker who  
6 investigates the report shall contact the person if necessary to  
7 obtain any additional information required to assist the person who  
8 is the subject of the report.

9 SECTION 2.09. Section 48.101, Human Resources Code, is  
10 amended by amending Subsections (d) and (e) and adding Subsections  
11 (d-1), (e-1), (g), and (g-1) to read as follows:

12 (d) The executive commissioner shall adopt rules providing  
13 ~~[department or investigating state agency by rule shall provide]~~  
14 for the release, on request, to a person who is the subject of a  
15 report of abuse, neglect, or exploitation or to that person's legal  
16 representative of otherwise confidential information relating to  
17 that report. The department or investigating state agency shall  
18 edit the information before release to protect the confidentiality  
19 of information relating to the reporter's identity and to protect  
20 any other individual whose safety or welfare may be endangered by  
21 disclosure.

22 (d-1) Subject to Subsection (e-1), the executive  
23 commissioner shall adopt rules providing for the release, on  
24 request, by the department or investigating state agency of  
25 otherwise confidential information relating to a person who is the  
26 subject of a report or investigation of abuse, neglect, or  
27 exploitation or to whom the department has provided protective

1 services, to:

2 (1) a court that has a matter pending before it that  
3 involves the person;

4 (2) the attorney ad litem or any other legal  
5 representative, other than a guardian, appointed for the person;  
6 and

7 (3) the person's legal guardian.

8 (e) The executive commissioner [~~department or investigating~~  
9 ~~state agency~~] may adopt rules relating to the release of  
10 information by the department or investigating state agency that is  
11 contained in the record of a deceased individual who was the subject  
12 of an investigation conducted by the department or investigating  
13 state agency or to whom the department has provided protective  
14 services. The rules must be consistent with the purposes of this  
15 chapter and any applicable state or federal law. The executive  
16 commissioner shall adopt rules, subject to Subsection (e-1), that  
17 provide for the release, on request, of otherwise confidential  
18 information in the deceased person's record to the personal  
19 representative appointed for the person's estate.

20 (e-1) Information released by the department or an  
21 investigating state agency under Subsection (d-1) or to a personal  
22 representative under Subsection (e) may not include the identity of  
23 the person who made the report of abuse, neglect, or exploitation.

24 (g) The department may establish procedures to exchange  
25 with a community service provider or local governmental entity  
26 confidential information relating to a report made under Section  
27 48.051(a) that is necessary for the department, provider, or entity

1 to provide protective services, health care services, housing  
2 services, or social services to the person who is the subject of the  
3 report. An exchange of information under this subsection does not  
4 affect whether the information is subject to disclosure under  
5 Chapter 552, Government Code.

6 (g-1) The executive commissioner by rule shall provide  
7 policies and procedures that are designed to guard against the  
8 unauthorized release or dissemination of confidential information  
9 that is exchanged under Subsection (g).

10 SECTION 2.10. (a) Subchapter D, Chapter 48, Human  
11 Resources Code, is amended by adding Section 48.1521 to read as  
12 follows:

13 Sec. 48.1521. INVESTIGATION OF COMPLEX CASES. (a) The  
14 department shall develop and implement a system to ensure that, to  
15 the greatest extent possible, investigations conducted by the  
16 department that involve especially complex issues of abuse,  
17 neglect, or exploitation, such as issues associated with identity  
18 theft and other forms of financial exploitation, are:

19 (1) assigned to personnel who have experience and  
20 training in those issues; and

21 (2) monitored by a special task unit for complex  
22 cases.

23 (b) Each county with a population of 250,000 or more shall  
24 appoint persons to serve as standing members of a special task unit  
25 to monitor cases that arise in the county and require monitoring as  
26 provided by Subsection (a). The standing members of each special  
27 task unit must include:

1           (1) a provider of mental health services or aging  
2 services or a representative of a nonprofit entity serving persons  
3 with disabilities;

4           (2) a representative of a law enforcement agency; and

5           (3) a legal expert.

6           (c) In addition to the standing members specified by  
7 Subsection (b), the special task unit:

8           (1) must include, for purposes of monitoring a  
9 particular case, the caseworker on the case and the caseworker's  
10 supervisor; and

11           (2) may include a financial forensics expert and any  
12 other person with expertise that would be useful in monitoring a  
13 particular case.

14           (d) The department shall develop and make available to each  
15 county described by Subsection (b) a manual to assist the county in  
16 establishing and operating the special task unit required by this  
17 section. The manual must describe:

18           (1) the purpose and potential benefits of the unit;

19           (2) a description of the monitoring process the unit  
20 is expected to follow and potential problems the unit may  
21 encounter;

22           (3) the composition and administration of the unit;

23 and

24           (4) the department's criteria for selecting cases to  
25 be monitored by the unit.

26           (e) Before the special task unit makes a recommendation that  
27 a guardian be appointed for a person in a case being monitored by

1 the unit, the unit shall thoroughly consider all less-restrictive  
2 alternatives for legal intervention in the case.

3 (b) The Department of Family and Protective Services shall  
4 develop the manual required by Subsection (d), Section 48.1521,  
5 Human Resources Code, as added by Subsection (a) of this section, as  
6 soon as possible after the effective date of this article. In  
7 developing the manual, the department shall use Wisconsin's Elder  
8 Abuse Interdisciplinary Team Manual as a model.

9 SECTION 2.11. Subchapter D, Chapter 48, Human Resources  
10 Code, is amended by adding Section 48.1522 to read as follows:

11 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW  
12 ENFORCEMENT AGENCY. If during the course of the department's or  
13 another state agency's investigation of reported abuse, neglect, or  
14 exploitation a caseworker of the department or other state agency,  
15 as applicable, or the caseworker's supervisor has cause to believe  
16 that the elderly or disabled person has been abused, neglected, or  
17 exploited by another person in a manner that constitutes a criminal  
18 offense under any law, including Section 22.04, Penal Code, the  
19 caseworker or supervisor shall:

20 (1) immediately notify an appropriate law enforcement  
21 agency; and

22 (2) provide the law enforcement agency with a copy of  
23 the investigation report of the department or other state agency,  
24 as applicable, in a timely manner.

25 SECTION 2.12. Subchapter D, Chapter 48, Human Resources  
26 Code, is amended by adding Section 48.1523 to read as follows:

27 Sec. 48.1523. MANAGEMENT REVIEW FOLLOWING CERTAIN

1 INVESTIGATIONS. If the department receives and investigates a  
2 report made under Section 48.051, the subject of which is a person  
3 with respect to whom the department received and investigated two  
4 previous reports under that section and closed those  
5 investigations, an adult protective services supervisor shall:

6 (1) classify the case as a recidivist case;

7 (2) review the reports and investigation files  
8 concerning that person; and

9 (3) assist the caseworker and supervisor  
10 investigating the third report in developing a long-term plan for  
11 resolving the issues involved in the case.

12 SECTION 2.13. Subchapter D, Chapter 48, Human Resources  
13 Code, is amended by adding Section 48.159 to read as follows:

14 Sec. 48.159. INTERNAL REVIEW OF DEPARTMENT INVESTIGATION.

15 The department shall establish procedures for conducting an  
16 internal review of completed investigations conducted by the  
17 department under this chapter to:

18 (1) determine whether information obtained during the  
19 intake process was sufficient and accurate;

20 (2) assess whether telephone calls were appropriately  
21 routed;

22 (3) assess whether investigations were appropriately  
23 classified and prioritized;

24 (4) evaluate the case reports for any special issues  
25 or requirements;

26 (5) assess whether appropriate law enforcement  
27 agencies were notified of any suspected criminal conduct; and

1           (6) identify other relevant information to enable the  
2 department to take any corrective action necessary to improve the  
3 process of conducting investigations under this chapter.

4           SECTION 2.14. Section 48.202, Human Resources Code, is  
5 amended to read as follows:

6           Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY.

7 (a) In an investigation the department or state agency, as  
8 appropriate, shall determine:

9           (1) whether the person needs protective services from  
10 the department;

11           (2) what services are needed;

12           (3) whether services are available from the  
13 department, from the state agency, or in the community and how they  
14 can be provided;

15           (4) whether the person, acting alone, would be capable  
16 of obtaining needed services and could bear the cost or would be  
17 eligible for services from the department or state agency;

18           (5) whether a caretaker would be willing to provide  
19 services or would agree to their provision [~~provisions~~];

20           (6) whether the elderly or disabled person desires the  
21 services; [~~and~~]

22           (7) whether the person needs legal intervention to  
23 resolve the person's abuse, neglect, or exploitation and, if so,  
24 what type of intervention is needed; and

25           (8) other pertinent data.

26           (b) If the department or state agency, as appropriate,  
27 determines under Subsection (a)(1) that a person needs protective

1 services, the department or agency shall, in determining how those  
2 services can be provided as required by Subsection (a)(3),  
3 determine whether the person is eligible for community-based  
4 long-term care services and whether those services are available.  
5 If the person is eligible for those services, but the services are  
6 not immediately available, the department or state agency shall  
7 ensure that the person is placed on an appropriate waiting list for  
8 the services and that the person's abuse, neglect, or exploitation  
9 is resolved before the department closes the case.

10 SECTION 2.15. Subsections (a) and (b), Section 48.205,  
11 Human Resources Code, are amended to read as follows:

12 (a) Subject to the availability of funds, the [~~The~~  
13 department shall [~~may~~] provide direct protective services or  
14 contract with protective services agencies for the provision  
15 [~~provisions~~] of those services.

16 (b) The department shall use existing resources and  
17 services of public and private agencies in providing protective  
18 services. If the department does not have existing resources to  
19 provide direct protective services to elderly or disabled persons,  
20 the department, subject to the availability of funds, shall  
21 contract with protective services agencies for the provision of  
22 those services, especially to elderly or disabled persons residing  
23 in rural or remote areas of this state or not previously served by  
24 the department.

25 SECTION 2.16. Section 48.208, Human Resources Code, is  
26 amended by amending Subsection (e) and adding Subsections (c-1),  
27 (c-2), (c-3), (c-4), (c-5), (d-1), (e-1), and (e-2) to read as



1 follows:

2 (c-1) Notwithstanding Subsection (c)(4), in lieu of a  
3 medical report described by Subsection (c)(4), the petition may  
4 include an assessment of the elderly or disabled person's health  
5 status as described by Subsection (c-2) or psychological status as  
6 described by Subsection (c-3), or a medical opinion of the elderly  
7 or disabled person's health status as described by Subsection  
8 (c-4), if the department determines, after making a good faith  
9 effort, that a physician from whom the department may obtain the  
10 medical report is unavailable. The department shall ensure that  
11 the person who performs an assessment of the elderly or disabled  
12 person's health or psychological status has training and experience  
13 in performing the applicable assessment.

14 (c-2) Except as provided by Subsection (c-4), an assessment  
15 of the elderly or disabled person's health status must be performed  
16 by a physician assistant or advanced practice nurse. The person  
17 performing the assessment shall sign a report stating:

18 (1) that the elderly or disabled person is reported to  
19 be suffering from abuse, neglect, or exploitation, which may  
20 present a threat to the person's life or physical safety;

21 (2) whether the elderly or disabled person has  
22 provided the person's medical history to the physician assistant or  
23 advanced practice nurse, as applicable; and

24 (3) that in the professional opinion of the physician  
25 assistant or advanced practice nurse, as applicable, the issuance  
26 of an emergency order authorizing protective services without the  
27 elderly or disabled person's consent is necessary under the

1 circumstances.

2 (c-3) An assessment of the elderly or disabled person's  
3 psychological status must be performed by a licensed psychologist  
4 or master social worker who has training and expertise in issues  
5 related to abuse, neglect, and exploitation. The person performing  
6 the assessment shall sign a report stating:

7 (1) that the elderly or disabled person is reported to  
8 be suffering from abuse, neglect, or exploitation, which may  
9 present a threat to the person's life or physical safety; and

10 (2) that in the professional opinion of the licensed  
11 psychologist or master social worker, as applicable, the issuance  
12 of an emergency order authorizing protective services without the  
13 elderly or disabled person's consent is necessary under the  
14 circumstances.

15 (c-4) A registered nurse may perform a nursing assessment of  
16 the elderly or disabled person's health status. If the registered  
17 nurse, based on the registered nurse's professional nursing  
18 judgment, determines that the elderly or disabled person is likely  
19 to be suffering from abuse, neglect, or exploitation, which may  
20 present a threat to the person's life or physical safety, the  
21 registered nurse shall report that assessment to a physician.  
22 After the registered nurse reports the assessment, the physician  
23 shall sign a written opinion stating whether:

24 (1) the elderly or disabled person is reported to be  
25 suffering from abuse, neglect, or exploitation, which may present a  
26 threat to the person's life or physical safety; and

27 (2) the issuance of an emergency order authorizing

1 protective services without the elderly or disabled person's  
2 consent is necessary under the circumstances.

3 (c-5) The physician may use the registered nurse's  
4 assessment of the elderly or disabled person's health status as the  
5 basis of the physician's professional opinion under Subsection  
6 (c-4).

7 (d-1) If the court renders an order that is based on a  
8 petition including an assessment under Subsection (c-2) or (c-3) or  
9 a medical opinion under Subsection (c-4), the court shall order  
10 that the elderly or disabled person be examined by a physician not  
11 later than 72 hours after the time the provision of protective  
12 services begins. After performing the examination, the physician  
13 shall sign and submit to the court a medical report stating the  
14 physician's opinion whether the elderly or disabled person is:

15 (1) suffering from abuse, neglect, or exploitation  
16 presenting a threat to life or physical safety; and

17 (2) physically or mentally incapable of consenting to  
18 services.

19 (e) The emergency order expires at the end of 72 hours from  
20 the time ~~of~~ the order is rendered unless:

21 (1) the emergency order terminates as provided by  
22 Subsection (e-1);

23 (2) the 72-hour period ends on a Saturday, Sunday, or  
24 legal holiday in which event the order is automatically extended to  
25 4 p.m. on the first succeeding business day; or

26 (3) the court extends the order as provided by  
27 Subsection (e-2).

1       (e-1) An emergency order that was rendered based on a  
2 petition that included an assessment under Subsection (c-2) or  
3 (c-3) or a medical opinion under Subsection (c-4) immediately  
4 terminates if the medical report issued under Subsection (d-1)  
5 states the physician's opinion that the elderly or disabled person:

6           (1) is not suffering from abuse, neglect, or  
7 exploitation presenting a threat to life or physical safety; or

8           (2) is physically or mentally capable of consenting to  
9 services.

10       (e-2) The court may extend an emergency order issued under  
11 this section [~~An order may be renewed~~] for a period of not more than  
12 30 [~~14 additional~~] days. An extension [~~A renewal~~] order that ends  
13 on a Saturday, Sunday, or legal holiday is automatically extended  
14 to 4 p.m. on the first succeeding business day. The court may  
15 modify or terminate the emergency order on petition of the  
16 department, the incapacitated person, or any person interested in  
17 his welfare.

18       SECTION 2.17. Section 531.0162, Government Code, is amended  
19 by adding Subsections (c) and (d) to read as follows:

20       (c) Subject to available appropriations, the commission  
21 shall use technology whenever possible in connection with the adult  
22 protective services program of the Department of Family and  
23 Protective Services to:

24           (1) provide for automated collection of information  
25 necessary to evaluate program effectiveness using systems that  
26 integrate collection of necessary information with other routine  
27 duties of caseworkers and other service providers; and

1           (2) consequently reduce the time that caseworkers and  
2 other service providers are required to use in gathering and  
3 reporting information necessary for program evaluation.

4           (d) The commission shall include representatives of the  
5 private sector in the technology planning process used to determine  
6 appropriate technology for the adult protective services program of  
7 the Department of Family and Protective Services.

8           SECTION 2.18. (a) Section 531.048, Government Code, is  
9 amended by adding Subsection (g) to read as follows:

10           (g) The executive commissioner shall develop and, subject  
11 to the availability of funds, implement a caseload management  
12 reduction plan to reduce, not later than January 1, 2011, caseloads  
13 for caseworkers employed by the adult protective services division  
14 of the Department of Family and Protective Services to a level that  
15 does not exceed professional caseload standards by more than five  
16 cases per caseworker. The plan must provide specific annual  
17 targets for caseload reduction.

18           (b) Not later than January 1, 2006, the executive  
19 commissioner of the Health and Human Services Commission shall  
20 adopt rules establishing the caseload management reduction plan as  
21 provided by Subsection (g), Section 531.048, Government Code, as  
22 added by this section.

23           (c) Not later than December 31 of each even-numbered year,  
24 the executive commissioner of the Health and Human Services  
25 Commission shall prepare a report regarding the implementation of  
26 the plan provided by Subsection (g), Section 531.048, Government  
27 Code, as added by this section. The report must include an

1 assessment of the effect of the plan on reducing caseloads and the  
2 amount of funding necessary to fully implement the plan during the  
3 next biennium. The executive commissioner shall submit the report  
4 to the governor, the lieutenant governor, the speaker of the house  
5 of representatives, and the presiding officer of each house and  
6 senate standing committee having jurisdiction over adult  
7 protective services.

8 SECTION 2.19. LOCAL ADULT PROTECTIVE SERVICES BOARDS.

9 (a) The standing committee of the senate having jurisdiction over  
10 adult protective services shall conduct a study regarding the  
11 feasibility of establishing a system by which adult protective  
12 services are provided through a statewide network of local adult  
13 protective services boards. Each local adult protective services  
14 board would:

15 (1) serve a designated local adult protective services  
16 area;

17 (2) develop a local adult protective services plan for  
18 approval by the Department of Family and Protective Services; and

19 (3) receive a block grant through the department to  
20 provide adult protective services in accordance with the approved  
21 local adult protective services plan.

22 (b) The standing committee of the senate having  
23 jurisdiction over adult protective services must include the  
24 results of the study conducted under this section and  
25 recommendations regarding implementation of the local adult  
26 protective services board system in the committee's interim report  
27 to the 80th Legislature.

1 SECTION 2.20. PILOT PROGRAM FOR MONITORING CERTAIN  
2 UNLICENSED LONG-TERM CARE FACILITIES. (a) In this section:

3 (1) "Disabled person" has the meaning assigned by  
4 Section 48.002, Human Resources Code.

5 (2) "Elderly person" has the meaning assigned by  
6 Section 48.002, Human Resources Code.

7 (3) "Long-term care facility" means:

8 (A) a nursing home or related institution;

9 (B) an assisted living facility;

10 (C) an ICF-MR, as defined by Section 531.002,  
11 Health and Safety Code;

12 (D) a community home subject to Chapter 123,  
13 Human Resources Code; or

14 (E) any other residential arrangement that  
15 provides care to four or more adults who are unrelated to the  
16 proprietor of the establishment.

17 (b) The executive commissioner of the Health and Human  
18 Services Commission by rule shall develop and implement a pilot  
19 program in which local task forces composed of health care  
20 providers, representatives from governmental entities, and local  
21 government officials are created to:

22 (1) identify, through a coordination of efforts and  
23 resources, persons establishing or operating:

24 (A) long-term care facilities providing personal  
25 care services, health-related services, or other care to elderly or  
26 disabled persons without being licensed or providing disclosures as  
27 required by state law; or

1 (B) residential facilities or arrangements  
2 providing personal care services or other care in violation of  
3 state law to three or fewer elderly or disabled persons who are  
4 unrelated to the proprietor of the establishment; and

5 (2) take appropriate action necessary to:

6 (A) report the facilities or arrangements  
7 described by Subdivision (1) of this subsection to the appropriate  
8 state regulatory agencies or local law enforcement agencies;

9 (B) assist, whenever practicable, a long-term  
10 care facility described by Paragraph (A), Subdivision (1) of this  
11 subsection, in obtaining the appropriate licensure or making the  
12 appropriate disclosures on request of the facility; and

13 (C) assist, if it is feasible and practicable, a  
14 facility or arrangement described by Paragraph (B), Subdivision (1)  
15 of this subsection, in complying with applicable regulatory  
16 requirements of state or local law.

17 (c) Not later than January 1, 2006, the executive  
18 commissioner of the Health and Human Services Commission shall  
19 implement the pilot program in at least one rural area and one urban  
20 area of this state.

21 (d) Not later than January 1, 2007, the Health and Human  
22 Services Commission shall submit a report on the status and  
23 progress of the pilot program to the governor, the lieutenant  
24 governor, the speaker of the house of representatives, and the  
25 presiding officer of each house and senate standing committee  
26 having jurisdiction over adult protective services. The report  
27 must include a recommendation regarding the advisability of



1 expanding the pilot program statewide.

2 (e) This section expires September 1, 2007.

3 SECTION 2.21. REPEALER. Section 48.157, Human Resources  
4 Code, is repealed.

5 ARTICLE 3. GUARDIANSHIP AND RELATED SERVICES

6 SECTION 3.01. The heading to Subchapter E, Chapter 48,  
7 Human Resources Code, is amended to read as follows:

8 SUBCHAPTER E. PROVISION OF SERVICES; [~~GUARDIANSHIP SERVICES,~~]

9 EMERGENCY PROTECTION

10 SECTION 3.02. Section 48.209, Human Resources Code, is  
11 amended to read as follows:

12 Sec. 48.209. REFERRAL FOR GUARDIANSHIP SERVICES

13 [~~GUARDIANSHIPS~~]. (a) The department shall refer an individual to  
14 the Department of Aging and Disability Services for guardianship  
15 services under Subchapter E, Chapter 161, if the individual is:

16 (1) a minor in the conservatorship of the department  
17 who:

18 (A) is 16 years of age or older; and

19 (B) the department has reason to believe will,  
20 because of a physical or mental condition, be substantially unable  
21 to provide for the individual's own food, clothing, or shelter, to  
22 care for the individual's own physical health, or to manage the  
23 individual's own financial affairs when the individual becomes an  
24 adult; or

25 (2) an elderly or disabled person who:

26 (A) has been found by the department to be in a  
27 state of abuse, neglect, or exploitation; and

1           (B) the department has reason to believe is an  
2 incapacitated person as defined by Section 601(14)(B), Texas  
3 Probate Code.

4           (b) Notwithstanding Subsection (a), if a less restrictive  
5 alternative to guardianship is appropriate and available for the  
6 individual, the department shall pursue that alternative instead of  
7 making a referral to the Department of Aging and Disability  
8 Services for guardianship services.

9           (c) The department and the Department of Aging and  
10 Disability Services shall enter into a memorandum of understanding  
11 that sets forth in detail the roles and duties of each agency  
12 regarding the referral for guardianship services under Subsection  
13 (a) and the provision of guardianship services to individuals under  
14 Subchapter E, Chapter 161.

15           (d) Nothing in this section shall prohibit the department  
16 from also making a referral of an individual to a court having  
17 probate jurisdiction in the county where the individual is  
18 domiciled or found, if the court has requested the department to  
19 notify the court of any individuals who may be appropriate for a  
20 court-initiated guardianship proceeding under Section 683, Texas  
21 Probate Code. In making a referral under this subsection and if  
22 requested by the court, the department shall, to the extent allowed  
23 by law, provide the court with all relevant information in the  
24 department's records relating to the individual. The court, as  
25 part of this process, may not require the department to:

26           (1) perform the duties of a guardian ad litem or court  
27 investigator as prescribed by Section 683, Texas Probate Code; or

1           (2) gather additional information not contained in the  
2 department's records.

3           (e) The department may not be appointed to serve as  
4 temporary or permanent guardian for any individual. [~~(a) The~~  
5 ~~department shall file an application under Section 682 or 875,~~  
6 ~~Texas Probate Code, to be appointed guardian of the person or estate~~  
7 ~~or both of an individual who is a minor, is a conservatee of the~~  
8 ~~department, and, because of a physical or mental condition, will be~~  
9 ~~substantially unable to provide food, clothing, or shelter for~~  
10 ~~himself or herself, to care for the individual's own physical~~  
11 ~~health, or to manage the individual's own financial affairs when~~  
12 ~~the individual becomes an adult. If a less restrictive alternative~~  
13 ~~to guardianship is available for an individual, the department~~  
14 ~~shall pursue the alternative instead of applying for appointment as~~  
15 ~~a guardian.~~

16           ~~[(b) As a last resort, the department may apply to be~~  
17 ~~appointed guardian of the person or estate of an elderly or disabled~~  
18 ~~person who is found by the department to be in a state of abuse,~~  
19 ~~neglect, or exploitation, and who, because of a physical or mental~~  
20 ~~condition, will be substantially unable to provide food, clothing,~~  
21 ~~or shelter for himself or herself, to care for the individual's own~~  
22 ~~physical health, or to manage the individual's own financial~~  
23 ~~affairs. A representative of the department shall take the oath~~  
24 ~~required by the Texas Probate Code on behalf of the department if~~  
25 ~~the department is appointed guardian. If the department knows that~~  
26 ~~an individual is willing and able to serve as the guardian, the~~  
27 ~~department may inform the court of that individual's willingness~~

1 ~~and ability.~~

2 ~~[(c) If appropriate, the department may contract with a~~  
3 ~~political subdivision of this state, a private agency, or another~~  
4 ~~state agency for the provision of guardianship services under this~~  
5 ~~section. The department or a political subdivision of the state or~~  
6 ~~state agency with which the department contracts under this section~~  
7 ~~is not required to post a bond or pay any cost or fee otherwise~~  
8 ~~required by the Texas Probate Code.~~

9 ~~[(d) If the department is appointed guardian, the~~  
10 ~~department is not liable for funding services provided to the~~  
11 ~~department's ward, including long-term care or burial expenses.~~

12 ~~[(e) The department may not be required to pay fees~~  
13 ~~associated with the appointment of a guardian ad litem or attorney~~  
14 ~~ad litem.~~

15 ~~[(f) The department shall file an application with the court~~  
16 ~~to name a successor guardian if the department becomes aware of a~~  
17 ~~qualified and willing individual or guardianship program serving~~  
18 ~~the area in which the ward is located.]~~

19 SECTION 3.03. Section 161.071, Human Resources Code, is  
20 amended to read as follows:

21 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The  
22 department is responsible for administering human services  
23 programs for the aging and disabled, including:

24 (1) administering and coordinating programs to  
25 provide community-based care and support services to promote  
26 independent living for populations that would otherwise be  
27 institutionalized;

1           (2) providing institutional care services, including  
2 services through convalescent and nursing homes and related  
3 institutions under Chapter 242, Health and Safety Code;

4           (3) providing and coordinating programs and services  
5 for persons with disabilities, including programs for the  
6 treatment, rehabilitation, or benefit of persons with  
7 developmental disabilities or mental retardation;

8           (4) operating state facilities for the housing,  
9 treatment, rehabilitation, or benefit of persons with  
10 disabilities, including state schools for persons with mental  
11 retardation;

12           (5) serving as the state unit on aging required by the  
13 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)  
14 and its subsequent amendments, including performing the general  
15 functions under Section 101.022 to ensure:

16           (A) implementation of the federal Older  
17 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its  
18 subsequent amendments, including implementation of services and  
19 volunteer opportunities under that Act for older residents of this  
20 state through area agencies on aging;

21           (B) advocacy for residents of nursing facilities  
22 through the office of the state long-term care ombudsman;

23           (C) fostering of the state and community  
24 infrastructure and capacity to serve older residents of this state;  
25 and

26           (D) availability of a comprehensive resource for  
27 state government and the public on trends related to and services

1 and programs for an aging population;

2 (6) performing all licensing and enforcement  
3 activities and functions related to long-term care facilities,  
4 including licensing and enforcement activities related to  
5 convalescent and nursing homes and related institutions under  
6 Chapter 242, Health and Safety Code;

7 (7) performing all licensing and enforcement  
8 activities related to assisted living facilities under Chapter 247,  
9 Health and Safety Code;

10 (8) performing all licensing and enforcement  
11 activities related to intermediate care facilities for persons with  
12 mental retardation under Chapter 252, Health and Safety Code; ~~and~~

13 (9) performing all licensing and enforcement  
14 activities and functions related to home and community support  
15 services agencies under Chapter 142, Health and Safety Code; and

16 (10) serving as guardian of the person or estate, or  
17 both, for an incapacitated individual as provided by Subchapter E  
18 of this chapter and Chapter XIII, Texas Probate Code.

19 SECTION 3.04. Chapter 161, Human Resources Code, is amended  
20 by adding Subchapter E to read as follows:

21 SUBCHAPTER E. GUARDIANSHIP SERVICES

22 Sec. 161.101. GUARDIANSHIP SERVICES. (a) The department  
23 shall file an application under Section 682 or 875, Texas Probate  
24 Code, to be appointed guardian of the person or estate, or both, of  
25 a minor referred to the department under Section 48.209(a)(1) for  
26 guardianship services if the department determines:

27 (1) that the minor, because of a mental or physical

1 condition, will be substantially unable to provide for the minor's  
2 own food, clothing, or shelter, to care for the minor's own physical  
3 health, or to manage the individual's own financial affairs when  
4 the minor becomes an adult; and

5 (2) that a less restrictive alternative to  
6 guardianship is not available for the minor.

7 (b) The department shall conduct a thorough assessment of  
8 the conditions and circumstances of an elderly or disabled person  
9 referred to the department under Section 48.209(a)(2) for  
10 guardianship services to determine whether a guardianship is  
11 appropriate for the individual. In determining whether a  
12 guardianship is appropriate, the department may consider the  
13 resources and funds available to meet the needs of the elderly or  
14 disabled person. The executive commissioner shall adopt rules for  
15 the administration of this subsection.

16 (c) If after conducting an assessment of an elderly or  
17 disabled person under Subsection (b) the department determines that  
18 a guardianship is appropriate for the elderly or disabled person,  
19 the department shall file an application under Section 682 or 875,  
20 Texas Probate Code, to be appointed guardian of the person or  
21 estate, or both, of the individual. If after conducting the  
22 assessment the department determines that a less restrictive  
23 alternative to guardianship is available for the elderly or  
24 disabled person, the department shall pursue the less restrictive  
25 alternative instead of applying for appointment as the person's  
26 guardian.

27 (d) The department may not be required by a court to file an

1 application for guardianship, and the department may not be  
2 appointed as permanent guardian for any individual unless the  
3 department files an application to serve or otherwise agrees to  
4 serve as the individual's guardian of the person or estate, or both.

5 (e) A guardianship created for an individual as a result of  
6 an application for guardianship filed under Subsection (a) may not  
7 take effect before the individual's 18th birthday.

8 Sec. 161.102. REFERRAL TO GUARDIANSHIP PROGRAM, COURT, OR  
9 OTHER PERSON. (a) If the department becomes aware of a  
10 guardianship program, private professional guardian, or other  
11 person willing and able to provide the guardianship services that  
12 would otherwise be provided by the department to an individual  
13 referred to the department by the Department of Family and  
14 Protective Services under Section 48.209, the department shall  
15 refer the individual to that person or program for guardianship  
16 services.

17 (b) If requested by a court, the department shall notify the  
18 court of any referral made to the department by the Department of  
19 Family and Protective Services relating to any individual who is  
20 domiciled or found in a county where the requesting court has  
21 probate jurisdiction and who may be appropriate for a  
22 court-initiated guardianship proceeding under Section 683, Texas  
23 Probate Code. In making a referral under this subsection and if  
24 requested by the court, the department shall, to the extent allowed  
25 by law, provide the court with all relevant information in the  
26 department's records relating to the individual. The court, as  
27 part of this process, may not require the department to:



1           (1) perform the duties of a guardian ad litem or court  
2 investigator as prescribed by Section 683, Texas Probate Code; or

3           (2) gather additional information not contained in the  
4 department's records.

5           Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If  
6 appropriate, the department may contract with a political  
7 subdivision of this state, a guardianship program as defined by  
8 Section 601, Texas Probate Code, a private agency, or another state  
9 agency for the provision of guardianship services under this  
10 section.

11           Sec. 161.104. QUALITY ASSURANCE PROGRAM. The department  
12 shall develop and implement a quality assurance program for  
13 guardianship services provided by or on behalf of the department.  
14 If the department enters into a contract with a political  
15 subdivision, guardianship program, private agency, or other state  
16 agency under Section 161.103, the department shall establish a  
17 monitoring system as part of the quality assurance program to  
18 ensure the quality of guardianship services for which the  
19 department contracts under that section.

20           Sec. 161.105. OATH. A representative of the department  
21 shall take the oath required by the Texas Probate Code on behalf of  
22 the department if the department is appointed guardian of the  
23 person or estate, or both, of a ward under Chapter XIII of that  
24 code.

25           Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving  
26 as guardian of the person or estate, or both, for an incapacitated  
27 individual, the department has all the powers granted and duties

1 prescribed to a guardian under Chapter XIII, Texas Probate Code, or  
2 any other applicable law.

3 Sec. 161.107. EXEMPTION FROM GUARDIANSHIP BONDS, CERTAIN  
4 COSTS, FEES, AND EXPENSES. (a) The department or a political  
5 subdivision of this state or state agency with which the department  
6 contracts under Section 161.103 is not required to post a bond or  
7 pay any cost or fee associated with a bond otherwise required by the  
8 Texas Probate Code in guardianship matters.

9 (b) The department is not required to pay any cost or fee  
10 otherwise imposed for court proceedings or other services,  
11 including:

12 (1) a filing fee or fee for issuance of service of  
13 process imposed by Section 51.317, 51.318(b)(2), or 51.319,  
14 Government Code;

15 (2) a court reporter fee imposed by Section 51.601,  
16 Government Code;

17 (3) a judicial fund fee imposed by Section 51.702,  
18 Government Code;

19 (4) a judge's fee imposed by Section 25.0008 or  
20 25.0029, Government Code;

21 (5) a cost or security fee imposed by Section 12 or  
22 622, Texas Probate Code; or

23 (6) a fee imposed by a county officer under Section  
24 118.011 or 118.052, Local Government Code.

25 (c) The department may not be required to pay fees  
26 associated with the appointment of a guardian ad litem or attorney  
27 ad litem.

1       (d) A political subdivision of this state or state agency  
2 with which the department contracts under Section 161.103 is not  
3 required to pay any cost or fee otherwise required by the Texas  
4 Probate Code.

5       (e) If the department is appointed guardian, the department  
6 is not liable for funding services provided to the department's  
7 ward, including long-term care or burial expenses.

8       Sec. 161.108. SUCCESSOR GUARDIAN. The department shall  
9 review each of the department's pending guardianship cases at least  
10 annually to determine whether a more suitable person, including a  
11 guardianship program or private professional guardian, is willing  
12 and able to serve as successor guardian for a ward of the  
13 department. If the department becomes aware of any person's  
14 willingness and ability to serve as successor guardian, the  
15 department shall notify the court in which the guardianship is  
16 pending as required by Section 695A, Texas Probate Code.

17       Sec. 161.109. ACCESS TO RECORDS OR DOCUMENTS. (a) The  
18 department shall have access to all of the records and documents  
19 concerning an individual referred for guardianship services under  
20 this subchapter that are necessary to the performance of the  
21 department's duties under this subchapter, including  
22 client-identifying information and medical, psychological,  
23 educational, or residential information.

24       (b) The department is exempt from the payment of a fee  
25 otherwise required or authorized by law to obtain a medical record,  
26 including a mental health record, from a hospital or health care  
27 provider if the request for a record is made in the course of an

1 assessment for guardianship services conducted by the department.

2 (c) If the department cannot obtain access to a record or  
3 document that is necessary to properly perform a duty under this  
4 subchapter, the department may petition the probate court or the  
5 statutory or constitutional court having probate jurisdiction for  
6 access to the record or document.

7 (d) The court with probate jurisdiction shall, on good cause  
8 shown, order the person or entity who denied access to a record or  
9 document to allow the department to have access to the record or  
10 document under the terms and conditions prescribed by the court.

11 (e) A person or entity is entitled to notice of and a hearing  
12 on the department's petition for access as described by this  
13 section.

14 (f) Access to, or disclosure of, a confidential record or  
15 other confidential information under this section does not  
16 constitute a waiver of confidentiality for other purposes or as to  
17 other persons.

18 Sec. 161.110. LEGAL REPRESENTATION OF DEPARTMENT.

19 (a) Except as provided by Subsection (b), (c), or (f), the  
20 prosecuting attorney representing the state in criminal cases in  
21 the county court shall represent the department in any proceeding  
22 under this subchapter unless the representation would be a conflict  
23 of interest.

24 (b) If the attorney representing the state in criminal cases  
25 in the county court is unable to represent the department in an  
26 action under this subchapter because of a conflict of interest, the  
27 attorney general shall represent the department in the action.

1       (c) If the attorney general is unable to represent the  
2 department in an action under this subchapter, the attorney general  
3 shall deputize an attorney who has contracted with the department  
4 under Subsection (d) or an attorney employed by the department  
5 under Subsection (e) to represent the department in the action.

6       (d) Subject to the approval of the attorney general, the  
7 department may contract with a private attorney to represent the  
8 department in an action under this subchapter.

9       (e) The department may employ attorneys to represent the  
10 department in an action under this subchapter.

11       (f) In a county having a population of more than 2.8  
12 million, the prosecuting attorney representing the state in civil  
13 cases in the county court shall represent the department in any  
14 proceeding under this subchapter unless the representation would be  
15 a conflict of interest. If such attorney is unable to represent the  
16 department in an action under this subchapter because of a conflict  
17 of interest, the attorney general shall represent the department in  
18 the action.

19       Sec. 161.111. CONFIDENTIALITY AND DISCLOSURE OF  
20 INFORMATION. (a) All files, reports, records, communications, or  
21 working papers used or developed by the department in the  
22 performance of duties relating to the assessment for or the  
23 provision of guardianship services to an individual referred for  
24 guardianship services under this subchapter are confidential and  
25 not subject to disclosure under Chapter 552, Government Code.

26       (b) Confidential information may be disclosed only for a  
27 purpose consistent with this subchapter, as required by other state

1 or federal law, or as necessary to enable the department to exercise  
2 its powers and duties as guardian of the person or estate, or both,  
3 of an individual.

4 (c) A court may order disclosure of confidential  
5 information only if:

6 (1) a motion is filed with the court requesting  
7 release of the information and a hearing on that request;

8 (2) notice of the hearing is served on the department  
9 and each interested party; and

10 (3) the court determines after the hearing and an in  
11 camera review of the information that disclosure is essential to  
12 the administration of justice and will not endanger the life or  
13 safety of any individual who:

14 (A) is being assessed by the department for  
15 guardianship services under this subchapter;

16 (B) is a ward of the department; or

17 (C) provides services to a ward of the  
18 department.

19 (d) The department shall establish a policy and procedures  
20 for the exchange of information with another state agency or  
21 governmental entity, including a court, with a local guardianship  
22 program to which an individual is referred for services, or with any  
23 other entity who provides services to a ward of the department, as  
24 necessary for the department, state agency, governmental entity, or  
25 other entity to properly execute its respective duties and  
26 responsibilities to provide guardianship services or other needed  
27 services to meet the needs of the ward under this subchapter or

1 other law. An exchange of information under this subsection does  
2 not constitute a release for purposes of waiving the  
3 confidentiality of the information exchanged.

4 Sec. 161.112. INDEMNIFICATION FOR LEGAL EXPENSES. If a  
5 present or former employee of the department who was involved in  
6 activities related to the provision of guardianship services under  
7 this subchapter is criminally prosecuted for conduct related to the  
8 person's misfeasance or nonfeasance in the course and scope of the  
9 person's employment and is found not guilty after a trial or appeal  
10 or if the complaint or indictment is dismissed without a plea of  
11 guilty or nolo contendere being entered, the department may  
12 indemnify the person or the person's estate for the reasonable  
13 attorney's fees incurred in defense of the prosecution up to a  
14 maximum of \$10,000.

15 Sec. 161.113. IMMUNITY. (a) In this section, "volunteer"  
16 means a person who:

17 (1) renders services for or on behalf of the  
18 department under the supervision of a department employee; and

19 (2) does not receive compensation that exceeds the  
20 authorized expenses the person incurs in performing those services.

21 (b) A department employee or an authorized volunteer who  
22 performs a department duty or responsibility under this subchapter  
23 is immune from civil or criminal liability for any act or omission  
24 that relates to the duty or responsibility if the person acted in  
25 good faith and within the scope of the person's authority.

26 SECTION 3.05. Section 601, Texas Probate Code, is amended  
27 by adding Subdivision (12-a) and amending Subdivisions (13) and

1 (24) to read as follows:

2 (12-a) "Guardianship Certification Board" means the  
3 Guardianship Certification Board established under Chapter 111,  
4 Government Code.

5 (13) "Guardianship program" has the meaning assigned  
6 by Section 111.001, Government Code [~~means a local, county, or~~  
7 ~~regional program that provides guardianship and related services to~~  
8 ~~an incapacitated person or other person who needs assistance in~~  
9 ~~making decisions concerning the person's own welfare or financial~~  
10 ~~affairs]~~.

11 (24) "Private professional guardian" has the meaning  
12 assigned by Section 111.001, Government Code [~~means a person, other~~  
13 ~~than an attorney or a corporate fiduciary, who is engaged in the~~  
14 ~~business of providing guardianship services]~~.

15 SECTION 3.06. The heading to Subpart J, Part 2, Chapter  
16 XIII, Texas Probate Code, is amended to read as follows:

17 SUBPART J. LIABILITY OF GUARDIAN [~~FOR CONDUCT OF WARD~~]

18 SECTION 3.07. The heading to Section 673, Texas Probate  
19 Code, is amended to read as follows:

20 Sec. 673. LIABILITY OF GUARDIAN FOR CONDUCT OF WARD.

21 SECTION 3.08. Subpart J, Part 2, Chapter XIII, Texas  
22 Probate Code, is amended by adding Section 674 to read as follows:

23 Sec. 674. IMMUNITY OF GUARDIANSHIP PROGRAM. A guardianship  
24 program is not liable for civil damages arising from an action taken  
25 or omission made by a person while providing guardianship services  
26 to a ward on behalf of the guardianship program, unless the action  
27 or omission:



1           (1) was wilfully wrongful;

2           (2) was taken or made with conscious indifference or  
3 reckless disregard to the safety of the incapacitated person or  
4 another;

5           (3) was taken or made in bad faith or with malice; or

6           (4) was grossly negligent.

7           SECTION 3.09. Section 682, Texas Probate Code, is amended  
8 to read as follows:

9           Sec. 682. APPLICATION; CONTENTS. Any person may commence a  
10 proceeding for the appointment of a guardian by filing a written  
11 application in a court having jurisdiction and venue. The  
12 application must be sworn to by the applicant and state:

13           (1) the name, sex, date of birth, and address of the  
14 proposed ward;

15           (2) the name, relationship, and address of the person  
16 the applicant desires to have appointed as guardian;

17           (3) whether guardianship of the person or estate, or  
18 both, is sought;

19           (4) the nature and degree of the alleged incapacity,  
20 the specific areas of protection and assistance requested, and the  
21 limitation of rights requested to be included in the court's order  
22 of appointment;

23           (5) the facts requiring that a guardian be appointed  
24 and the interest of the applicant in the appointment;

25           (6) the nature and description of any guardianship of  
26 any kind existing for the proposed ward in any other state;

27           (7) the name and address of any person or institution

1 having the care and custody of the proposed ward;

2 (8) the approximate value and description of the  
3 proposed ward's property, including any compensation, pension,  
4 insurance, or allowance to which the proposed ward may be entitled;

5 (9) the name and address of any person whom the  
6 applicant knows to hold a power of attorney signed by the proposed  
7 ward and a description of the type of power of attorney;

8 (10) if the proposed ward is a minor and if known by  
9 the applicant:

10 (A) the name of each parent of the proposed ward  
11 and state the parent's address or that the parent is deceased;

12 (B) the name and age of each sibling, if any, of  
13 the proposed ward and state the sibling's address or that the  
14 sibling is deceased; and

15 (C) if each of the proposed ward's parents and  
16 siblings are deceased, the names and addresses of the proposed  
17 ward's next of kin who are adults;

18 (11) if the proposed ward is a minor, whether the minor  
19 was the subject of a legal or conservatorship proceeding within the  
20 preceding two-year period and, if so, the court involved, the  
21 nature of the proceeding, and the final disposition, if any, of the  
22 proceeding;

23 (12) if the proposed ward is an adult and if known by  
24 the applicant:

25 (A) the name of the proposed ward's spouse, if  
26 any, and state the spouse's address or that the spouse is deceased;

27 (B) the name of each of the proposed ward's

1 parents and state the parent's address or that the parent is  
2 deceased;

3 (C) the name and age of each of the proposed  
4 ward's siblings, if any, and state the sibling's address or that the  
5 sibling is deceased;

6 (D) the name and age of each of the proposed  
7 ward's children, if any, and state the child's address or that the  
8 child is deceased; and

9 (E) if the proposed ward's spouse and each of the  
10 proposed ward's parents, siblings, and children are deceased, or,  
11 if there is no spouse, parent, adult sibling, or adult child, the  
12 names and addresses of the proposed ward's next of kin who are  
13 adults;

14 (13) facts showing that the court has venue over the  
15 proceeding; and

16 (14) if applicable, that the person whom the applicant  
17 desires to have appointed as a guardian is a private professional  
18 guardian who is certified under Subchapter C, Chapter 111,  
19 Government Code, and has complied with the requirements of Section  
20 697 of this code.

21 SECTION 3.10. Section 695A, Texas Probate Code, is amended  
22 by adding Subsection (a-1) to read as follows:

23 (a-1) If, while serving as a guardian for a ward under this  
24 chapter, the Department of Aging and Disability Services becomes  
25 aware of a guardianship program or private professional guardian  
26 willing and able to serve as the ward's successor guardian and the  
27 department is not aware of a family member or friend of the ward or

1 any other interested person who is willing and able to serve as the  
2 ward's successor guardian, the department shall notify the court in  
3 which the guardianship is pending of the guardianship program's or  
4 private professional guardian's willingness and ability to serve.

5 SECTION 3.11. Section 696, Texas Probate Code, is amended  
6 to read as follows:

7 Sec. 696. APPOINTMENT OF PRIVATE PROFESSIONAL GUARDIANS. A  
8 court may not appoint a private professional guardian to serve as a  
9 guardian or permit a private professional guardian to continue to  
10 serve as a guardian under this code if the private professional  
11 guardian:

12 (1) has not complied with the requirements of Section  
13 697 of this code; or

14 (2) is not certified as provided by Section 697B of  
15 this code.

16 SECTION 3.12. Subpart A, Part 3, Texas Probate Code, is  
17 amended by adding Sections 696A and 696B to read as follows:

18 Sec. 696A. APPOINTMENT OF PUBLIC GUARDIANS. (a) An  
19 individual employed by or contracting with a guardianship program  
20 must be certified as provided by Section 697B of this code to  
21 provide guardianship services to a ward of the guardianship  
22 program.

23 (b) An employee of the Department of Aging and Disability  
24 Services must be certified as provided by Section 697B of this code  
25 to provide guardianship services to a ward of the department.

26 Sec. 696B. APPOINTMENT OF FAMILY MEMBERS OR FRIENDS. A  
27 family member or friend of an incapacitated person is not required

1 to be certified under Subchapter C, Chapter 111, Government Code,  
2 or any other law to serve as the person's guardian.

3 SECTION 3.13. Subsections (a), (c), and (e), Section 697,  
4 Texas Probate Code, are amended to read as follows:

5 (a) A private professional guardian must apply annually to  
6 the clerk of the county having venue over the proceeding for the  
7 appointment of a guardian for a certificate of registration  
8 [~~certification~~]. The application must include a sworn statement  
9 containing the following information concerning a private  
10 professional guardian or each person who represents or plans to  
11 represent the interests of a ward as a guardian on behalf of the  
12 private professional guardian:

13 (1) educational background and professional  
14 experience;

15 (2) three or more professional references;

16 (3) the names of all of the wards the private  
17 professional guardian or person is or will be serving as a guardian;

18 (4) the aggregate fair market value of the property of  
19 all wards that is being or will be managed by the private  
20 professional guardian or person;

21 (5) place of residence, business address, and business  
22 telephone number; and

23 (6) whether the private professional guardian or  
24 person has ever been removed as a guardian by the court or resigned  
25 as a guardian in a particular case, and, if so, a description of the  
26 circumstances causing the removal or resignation, and the style of  
27 the suit, the docket number, and the court having jurisdiction over

1 the proceeding.

2 (c) The term of the registration [~~certification~~] begins on  
3 the date that the requirements are met and extends through December  
4 31 of the initial year. After the initial year of registration  
5 [~~certification~~], the term of the registration [~~certification~~]  
6 begins on January 1 and ends on December 31 of each year. A renewal  
7 application must be completed during December of the year preceding  
8 the year for which the renewal is requested.

9 (e) Not later than February 1 of each year, the clerk shall  
10 submit to the Guardianship Certification Board and the Health and  
11 Human Services Commission the names and business addresses of  
12 private professional guardians who have satisfied the registration  
13 [~~certification~~] requirements under this section during the  
14 preceding year.

15 SECTION 3.14. Subpart A, Part 3, Texas Probate Code, is  
16 amended by adding Sections 697A and 697B to read as follows:

17 Sec. 697A. LIST OF CERTAIN PUBLIC GUARDIANS MAINTAINED BY  
18 COUNTY CLERKS. (a) Each guardianship program operating in a  
19 county shall submit annually to the county clerk a statement  
20 containing the name, address, and telephone number of each  
21 individual employed by or volunteering or contracting with the  
22 program to provide guardianship services to a ward or proposed ward  
23 of the program.

24 (b) The Department of Aging and Disability Services, if the  
25 department files an application for and is appointed to serve as  
26 guardian for one or more incapacitated persons residing in the  
27 county as provided by Subchapter E, Chapter 161, Human Resources

1 Code, shall submit annually to the county clerk the information  
2 required under Subsection (a) of this section for each department  
3 employee who is or will be providing guardianship services in the  
4 county on the department's behalf.

5 (c) Not later than February 1 of each year, the county clerk  
6 shall submit to the Guardianship Certification Board the  
7 information received under this section during the preceding year.

8 Sec. 697B. CERTIFICATION REQUIREMENT FOR PRIVATE  
9 PROFESSIONAL GUARDIANS AND PUBLIC GUARDIANS. (a) The following  
10 persons must be certified under Subchapter C, Chapter 111,  
11 Government Code:

12 (1) an individual who is a private professional  
13 guardian;

14 (2) an individual who will represent the interests of  
15 a ward as a guardian on behalf of a private professional guardian;

16 (3) an individual providing guardianship services to a  
17 ward of a guardianship program on the program's behalf, except as  
18 provided by Subsection (d) of this section; and

19 (4) an employee of the Department of Aging and  
20 Disability Services providing guardianship services to a ward of  
21 the department.

22 (b) A person whose certification has expired must obtain a  
23 new certification under Subchapter C, Chapter 111, Government Code,  
24 to be allowed to provide or continue to provide guardianship  
25 services to a ward under this code.

26 (c) The court shall notify the Guardianship Certification  
27 Board if the court becomes aware of a person who is not complying

1 with the terms of a certification issued under Subchapter C,  
2 Chapter 111, Government Code, or with the standards and rules  
3 adopted under that subchapter.

4 (d) An individual volunteering with a guardianship program  
5 is not required to be certified as provided by this section to  
6 provide guardianship services on the program's behalf.

7 SECTION 3.15. Subsections (a) and (c), Section 698, Texas  
8 Probate Code, are amended to read as follows:

9 (a) The clerk of the county having venue over the proceeding  
10 for the appointment of a guardian shall obtain criminal history  
11 record information that is maintained by the Department of Public  
12 Safety or the Federal Bureau of Investigation identification  
13 division relating to:

14 (1) a private professional guardian;

15 (2) each person who represents or plans to represent  
16 the interests of a ward as a guardian on behalf of the private  
17 professional guardian; ~~or~~

18 (3) each person employed by a private professional  
19 guardian who will:

20 (A) have personal contact with a ward or proposed  
21 ward;

22 (B) exercise control over and manage a ward's  
23 estate; or

24 (C) perform any duties with respect to the  
25 management of a ward's estate;

26 (4) each person employed by or volunteering or  
27 contracting with a guardianship program to provide guardianship



1 services to a ward of the program on the program's behalf; or

2 (5) an employee of the Department of Aging and  
3 Disability Services who is or will be providing guardianship  
4 services to a ward of the department.

5 (c) The court shall use the information obtained under this  
6 section only in determining whether to appoint, remove, or continue  
7 the appointment of a private professional guardian, a guardianship  
8 program, or the Department of Aging and Disability Services.

9 SECTION 3.16. Subsection (b), Section 700, Texas Probate  
10 Code, is amended to read as follows:

11 (b) A representative of the Department of Aging and  
12 Disability [~~Protective and Regulatory~~] Services shall take the oath  
13 required by Subsection (a) of this section if the department is  
14 appointed guardian.

15 SECTION 3.17. Subsection (a), Section 767, Texas Probate  
16 Code, is amended to read as follows:

17 (a) The guardian of the person is entitled to take [~~the~~]  
18 charge [~~and control~~] of the person of the ward, and the duties of  
19 the guardian correspond with the rights of the guardian. A guardian  
20 of the person has:

21 (1) the right to have physical possession of the ward  
22 and to establish the ward's legal domicile;

23 (2) the duty to provide [~~of~~] care, supervision  
24 [~~control~~], and protection for [~~of~~] the ward;

25 (3) the duty to provide the ward with clothing, food,  
26 medical care, and shelter;

27 (4) the power to consent to medical, psychiatric, and

1 surgical treatment other than the in-patient psychiatric  
2 commitment of the ward; and

3 (5) on application to and order of the court, the power  
4 to establish a trust in accordance with 42 U.S.C. Section  
5 1396p(d)(4)(B), as amended, and direct that the income of the ward  
6 as defined by that section be paid directly to the trust, solely for  
7 the purpose of the ward's eligibility for medical assistance under  
8 Chapter 32, Human Resources Code.

9 SECTION 3.18. Subsections (c) and (j), Section 875, Texas  
10 Probate Code, are amended to read as follows:

11 (c) A sworn, written application for the appointment of a  
12 temporary guardian shall be filed before the court appoints a  
13 temporary guardian. The application must state:

14 (1) the name and address of the person who is the  
15 subject of the guardianship proceeding;

16 (2) the danger to the person or property alleged to be  
17 imminent;

18 (3) the type of appointment and the particular  
19 protection and assistance being requested;

20 (4) the facts and reasons supporting the allegations  
21 and requests;

22 (5) the name, address, and qualification of the  
23 proposed temporary guardian;

24 (6) the name, address, and interest of the applicant;  
25 and

26 (7) if applicable, that the proposed temporary  
27 guardian is a private professional guardian who is certified under

1 Subchapter C, Chapter 111, Government Code, and has complied with  
2 the requirements of Section 697 of this code.

3 (j) The court may not customarily or ordinarily appoint the  
4 Department of Aging and Disability [~~Protective and Regulatory~~]  
5 Services as a temporary guardian under this section. The  
6 appointment of the department as a temporary guardian under this  
7 section should be made only as a last resort.

8 SECTION 3.19. Subdivisions (3) and (5), Section 531.121,  
9 Government Code, are amended to read as follows:

10 (3) "Guardianship program" has the meaning assigned by  
11 Section 111.001 [~~601, Texas Probate Code~~].

12 (5) "Private professional guardian" has the meaning  
13 assigned by Section 111.001 [~~601, Texas Probate Code~~].

14 SECTION 3.20. The heading to Section 531.122, Government  
15 Code, is amended to read as follows:

16 Sec. 531.122. ADVISORY BOARD; MEMBERSHIP [~~AND DUTIES~~].

17 SECTION 3.21. Subsections (a), (b), and (d), Section  
18 531.122, Government Code, are amended to read as follows:

19 (a) The Guardianship Advisory Board [~~shall advise the~~  
20 ~~commission in adopting standards under Section 531.124 and in~~  
21 ~~administering the commission's duties under this subchapter.~~

22 [~~(b) The advisory board~~] is composed of one representative  
23 from each of the health and human services regions, as defined by  
24 the commission, three public representatives, and one  
25 representative of the Department of Aging and Disability  
26 [~~Protective and Regulatory~~] Services. The representatives of the  
27 health and human services regions are appointed by a majority vote

1 of the judges of the statutory probate courts in each region. If a  
2 health and human services region does not contain a statutory  
3 probate court, the representative shall be appointed by a majority  
4 vote of the judges of the statutory probate courts in the state.  
5 The public representatives are appointed by the executive  
6 commissioner and the representative of the Department of Aging and  
7 Disability [~~Protective and Regulatory~~] Services is appointed by the  
8 commissioner of aging and disability services [~~Board of Protective~~  
9 ~~and Regulatory Services~~].

10 (d) A member of the advisory board serves at the pleasure of  
11 a majority of the judges of the statutory probate courts that  
12 appointed the member, of the executive commissioner, or of the  
13 commissioner of aging and disability services [~~Board of Protective~~  
14 ~~and Regulatory Services~~], as appropriate.

15 SECTION 3.22. Section 531.1235, Government Code, is  
16 amended to read as follows:

17 Sec. 531.1235. ADVISORY BOARD; [~~ADDITIONAL~~] DUTIES;  
18 STATEWIDE GUARDIANSHIP SYSTEM. (a) The advisory board shall  
19 advise the commission in administering the commission's duties  
20 under this subchapter. In addition [~~to performing the duties~~  
21 ~~described by Section 531.122~~], the advisory board shall:

22 (1) advise the commission and the Department of Aging  
23 and Disability [~~Protective and Regulatory~~] Services with respect to  
24 a statewide guardianship program and develop a proposal for a  
25 statewide guardianship program; and

26 (2) review and comment on the guardianship policies of  
27 all health and human services agencies and recommend changes to the

1 policies the advisory board considers necessary or advisable.

2 (b) The advisory board shall prepare an annual report with  
3 respect to the recommendations of the advisory board under  
4 Subsection (a). The advisory board shall file the report with the  
5 commission, the Department of Aging and Disability [~~Protective and~~  
6 ~~Regulatory~~] Services, the governor, the lieutenant governor, and  
7 the speaker of the house of representatives not later than December  
8 15 of each year.

9 SECTION 3.23. Section 531.124, Government Code, is amended  
10 to read as follows:

11 Sec. 531.124. COMMISSION DUTIES. (a) With the advice of  
12 the advisory board, the commission shall[+]

13 [~~(1) adopt minimum standards for the provision of~~  
14 ~~guardianship and related services by:~~

15 [~~(A) a guardianship program;~~

16 [~~(B) a person who provides guardianship and~~  
17 ~~related services on behalf of a guardianship program or local~~  
18 ~~guardianship center, including a person who serves as a volunteer~~  
19 ~~guardian; and~~

20 [~~(C) a person who serves as a private~~  
21 ~~professional guardian; and~~

22 [~~(2)~~] develop and, subject to appropriations,  
23 implement a plan to:

24 (1) [~~(A)~~] ensure that each incapacitated individual  
25 in this state who needs a guardianship or another less restrictive  
26 type of assistance to make decisions concerning the incapacitated  
27 individual's own welfare and financial affairs receives that

1 assistance; and

2 (2) [~~(B)~~] foster the establishment and growth of local  
3 volunteer guardianship programs.

4 (b) [~~The commission shall design the standards under~~  
5 ~~Subsection (a)(1) to protect the interests of an incapacitated~~  
6 ~~individual or other individual who needs assistance in making~~  
7 ~~decisions concerning the individual's own welfare or financial~~  
8 ~~affairs.~~

9 [~~(c)~~] The advisory board shall annually review and comment  
10 on the minimum standards adopted under Section 111.041 [~~Subsection~~  
11 ~~(a)(1)~~] and the plan implemented under Subsection (a)[~~(2)~~] and  
12 shall include its conclusions in the report submitted under Section  
13 531.1235.

14 SECTION 3.24. Title 2, Government Code, is amended by  
15 adding Subtitle J to read as follows:

16 SUBTITLE J. GUARDIANSHIPS

17 CHAPTER 111. GUARDIANSHIP CERTIFICATION BOARD

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 111.001. DEFINITIONS. In this chapter:

20 (1) "Administrative director" means the  
21 administrative director of the courts as appointed by Chapter 72.

22 (2) "Board" means the Guardianship Certification  
23 Board.

24 (3) "Corporate fiduciary" has the meaning assigned by  
25 Section 601, Texas Probate Code.

26 (4) "Director" means the administrative officer of the  
27 board, as provided by Section 111.021.

1           (5) "Guardian" has the meaning assigned by Section  
2 601, Texas Probate Code.

3           (6) "Guardianship program" means a local, county, or  
4 regional program that provides guardianship and related services to  
5 an incapacitated person or other person who needs assistance in  
6 making decisions concerning the person's own welfare or financial  
7 affairs.

8           (7) "Incapacitated person" has the meaning assigned by  
9 Section 601, Texas Probate Code.

10           (8) "Office of Court Administration" means the Office  
11 of Court Administration of the Texas Judicial System.

12           (9) "Private professional guardian" means a person,  
13 other than an attorney or a corporate fiduciary, who is engaged in  
14 the business of providing guardianship services.

15           (10) "Ward" has the meaning assigned by Section 601,  
16 Texas Probate Code.

17           Sec. 111.002. RULES. The supreme court may adopt rules  
18 consistent with this chapter, including rules governing the  
19 certification of individuals providing guardianship services.

20           Sec. 111.003. SUNSET PROVISION. The board is subject to  
21 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
22 in existence as provided by that chapter, the board is abolished and  
23 this chapter expires September 1, 2015.

24           [Sections 111.004-111.010 reserved for expansion]

25           SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

26           Sec. 111.011. BOARD. (a) The Guardianship Certification  
27 Board is composed of:

1           (1) 11 members appointed by the supreme court; and

2           (2) four public members appointed by the supreme court  
3 from a list of nominees submitted by the governor.

4           (b) The supreme court shall appoint members under  
5 Subsection (a)(1) from the different geographical areas of this  
6 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.

11           (d) To be eligible for appointment to the board other than  
12 as a public member, an individual must have demonstrated experience  
13 working with:

14                   (1) a guardianship program;

15                   (2) an organization that advocates on behalf of or in  
16 the interest of elderly individuals;

17                   (3) an organization that advocates on behalf of or in  
18 the interest of individuals with mental illness or mental  
19 retardation or individuals with physical disabilities; or

20                   (4) incapacitated individuals.

21           (e) The public members of the board must be:

22                   (1) caretakers of individuals with mental illness or  
23 mental retardation or individuals with physical disabilities; or

24                   (2) persons who advocate on behalf of or in the  
25 interest of individuals with mental illness or mental retardation  
26 or individuals with physical disabilities.

27           (f) Appointments to the board shall be made without regard



1 to the race, color, disability, sex, religion, age, or national  
2 origin of the appointees.

3 (g) The members of the board serve for staggered six-year  
4 terms, with the terms of one-third of the members expiring on  
5 February 1 of each odd-numbered year. Board members are not  
6 entitled to receive compensation or reimbursement for expenses.

7 (h) The board shall elect from among its members a presiding  
8 officer and other officers considered necessary.

9 (i) The board shall meet at least quarterly at the call of  
10 the presiding officer.

11 (j) Any action taken by the board must be approved by a  
12 majority vote of the members present.

13 Sec. 111.012. ADMINISTRATIVE ATTACHMENT. (a) The board is  
14 administratively attached to the Office of Court Administration.

15 (b) Notwithstanding any other law, the Office of Court  
16 Administration shall:

17 (1) provide administrative assistance, services, and  
18 materials to the board, including budget planning and purchasing;

19 (2) accept, deposit, and disburse money made available  
20 to the board;

21 (3) pay the salaries and benefits of the director;

22 (4) reimburse the travel expenses and other actual and  
23 necessary expenses of the director incurred in the performance of a  
24 function of the board, as provided by the General Appropriations  
25 Act; and

26 (5) provide the board with adequate computer equipment  
27 and support.

1       Sec. 111.013. ELIGIBILITY OF PUBLIC MEMBERS. A person is  
2 not eligible for appointment as a public member of the board if the  
3 person or the person's spouse:

4           (1) is certified by the board;

5           (2) is registered, certified, or licensed by a  
6 regulatory agency in the field of guardianship;

7           (3) is employed by or participates in the management  
8 of a business entity or other organization regulated by the board or  
9 receiving money from the Office of Court Administration;

10          (4) owns or controls, directly or indirectly, more  
11 than a 10 percent interest in a business entity or other  
12 organization regulated by the board or receiving money from the  
13 Office of Court Administration; or

14          (5) uses or receives a substantial amount of tangible  
15 goods, services, or funds from the Office of Court Administration.

16       Sec. 111.014. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

17       (a) In this section, "Texas trade association" means a cooperative  
18 and voluntarily joined statewide association of business or  
19 professional competitors in this state designed to assist its  
20 members and its industry or profession in dealing with mutual  
21 business or professional problems and in promoting their common  
22 interest.

23       (b) A person may not be a member of the board or may not be  
24 the director in a "bona fide executive, administrative, or  
25 professional capacity," as that phrase is used for purposes of  
26 establishing an exemption to the overtime provisions of the federal  
27 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),

1 if:

2 (1) the person is an officer, employee, or paid  
3 consultant of a Texas trade association in the field of  
4 guardianship; or

5 (2) the person's spouse is an officer, manager, or paid  
6 consultant of a Texas trade association in the field of  
7 guardianship.

8 (c) A person may not be a member of the board if the person  
9 is required to register as a lobbyist under Chapter 305 because of  
10 the person's activities for compensation on behalf of a profession  
11 related to the operation of the board.

12 Sec. 111.015. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a  
13 ground for removal from the board that a member:

14 (1) does not have at the time of appointment the  
15 qualifications required by Section 111.011;

16 (2) does not maintain during service on the board the  
17 qualifications required by Section 111.011;

18 (3) is ineligible for membership under Section 111.013  
19 or 111.014;

20 (4) cannot, because of illness or disability,  
21 discharge the member's duties for a substantial part of the member's  
22 term; or

23 (5) is absent from more than half of the regularly  
24 scheduled board meetings that the member is eligible to attend  
25 during a calendar year without an excuse approved by a majority vote  
26 of the board.

27 (b) The validity of an action of the board is not affected by

1 the fact that it is taken when a ground for removal of a board member  
2 exists.

3 (c) If the director has knowledge that a potential ground  
4 for removal exists, the director shall notify the presiding officer  
5 of the board of the potential ground. The presiding officer shall  
6 then notify the chief justice of the supreme court that a potential  
7 ground for removal exists. If the potential ground for removal  
8 involves the presiding officer, the director shall notify the next  
9 highest ranking officer of the board, who shall then notify the  
10 chief justice of the supreme court that a potential ground for  
11 removal exists.

12 Sec. 111.016. POWERS AND DUTIES OF BOARD. (a) The board is  
13 charged with the executive functions necessary to carry out the  
14 purposes of this chapter under rules adopted by the supreme court.

15 (b) The board shall:

16 (1) administer and enforce this chapter;

17 (2) develop and recommend proposed rules and  
18 procedures to the supreme court as necessary to implement this  
19 chapter;

20 (3) set the amount of each fee prescribed by Section  
21 111.042, subject to the approval of the supreme court;

22 (4) establish the qualifications for obtaining  
23 certification or recertification under Section 111.042;

24 (5) issue certificates to individuals who meet the  
25 certification requirements of Section 111.042; and

26 (6) perform any other duty required by this chapter or  
27 other law.

1       (c) The board may appoint any necessary or proper  
2 subcommittee.

3       (d) The board shall maintain:

4           (1) a complete record of each board proceeding; and

5           (2) a complete record of each certification issued,  
6 renewed, suspended, or revoked under Section 111.042.

7       Sec. 111.017. TRAINING. (a) A person who is appointed to  
8 and qualifies for office as a member of the board may not vote,  
9 deliberate, or be counted as a member in attendance at a meeting of  
10 the board until the person completes a training program that  
11 complies with this section.

12       (b) The training program must provide the person with  
13 information regarding:

14           (1) this chapter;

15           (2) the role and functions of the board;

16           (3) the current budget for the board;

17           (4) the results of the most recent formal audit of the  
18 board; and

19           (5) any applicable ethics policies adopted by the  
20 board.

21       Sec. 111.018. USE OF TECHNOLOGY. The Office of Court  
22 Administration shall research and propose appropriate  
23 technological solutions to improve the board's ability to perform  
24 its functions. The technological solutions must:

25           (1) ensure that the public is able to easily find  
26 information about the board on the Internet;

27           (2) ensure that persons who want to use the board's

1 services are able to:

2 (A) interact with the board through the Internet;

3 and

4 (B) access any service that can be provided  
5 effectively through the Internet; and

6 (3) be cost-effective and developed through the  
7 board's planning processes.

8 Sec. 111.019. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

9 (a) The board shall develop and implement a policy to encourage  
10 the use of appropriate alternative dispute resolution procedures to  
11 assist in the resolution of internal and external disputes under  
12 the board's jurisdiction.

13 (b) The procedures relating to alternative dispute  
14 resolution under this section must conform, to the extent possible,  
15 to any model guidelines issued by the State Office of  
16 Administrative Hearings for the use of alternative dispute  
17 resolution by state agencies.

18 Sec. 111.020. PUBLIC ACCESS. The board shall develop and  
19 implement policies that provide the public with a reasonable  
20 opportunity to appear before the board and to speak on any issue  
21 under the jurisdiction of the board.

22 Sec. 111.021. DIRECTOR. (a) The administrative director  
23 shall employ a director from a list of candidates submitted by the  
24 board. The administrative director may request an additional list  
25 of candidates if the administrative director does not select any of  
26 the initial candidates recommended by the board.

27 (b) The list may contain the hiring preference of the board.

1       (c) The director is the administrative officer of the board  
2 and is charged with carrying out the duties and functions conferred  
3 on the director by the board, this subchapter, and other law.

4       Sec. 111.022. DIVISION OF RESPONSIBILITIES. The board  
5 shall develop and implement policies that clearly separate the  
6 policy-making responsibilities of the board and the management  
7 responsibilities of the director.

8       Sec. 111.023. QUALIFICATIONS AND STANDARDS OF CONDUCT  
9 INFORMATION. The director shall provide to members of the board, as  
10 often as necessary, information regarding the requirements for  
11 office under this chapter, including information regarding a  
12 person's responsibilities under applicable laws relating to  
13 standards of conduct for state officers.

14       [Sections 111.024-111.040 reserved for expansion]

15       SUBCHAPTER C. REGULATION OF CERTAIN GUARDIANS

16       Sec. 111.041. STANDARDS FOR CERTAIN GUARDIANSHIPS AND  
17 ALTERNATIVES TO GUARDIANSHIP. (a) The board shall adopt minimum  
18 standards for:

19               (1) the provision of guardianship services or other  
20 similar but less restrictive types of assistance or services by:

21                       (A) guardianship programs; and

22                       (B) private professional guardians; and

23               (2) the provision of guardianship services by the  
24 Department of Aging and Disability Services.

25       (b) The board shall design the standards to protect the  
26 interests of an incapacitated person or other person needing  
27 assistance making decisions concerning the person's own welfare or

1 financial affairs.

2 Sec. 111.042. CERTIFICATION REQUIRED FOR CERTAIN  
3 GUARDIANS. (a) To provide guardianship services in this state,  
4 the following individuals must hold a certificate issued under this  
5 section:

6 (1) an individual who is a private professional  
7 guardian;

8 (2) an individual who will provide those services to a  
9 ward of a private professional guardian or the Department of Aging  
10 and Disability Services on the guardian's or department's behalf;  
11 and

12 (3) an individual, other than a volunteer, who will  
13 provide those services to a ward of a guardianship program on the  
14 program's behalf.

15 (b) An applicant for a certificate under this section must:

16 (1) apply to the board on a form prescribed by the  
17 board; and

18 (2) submit with the application a nonrefundable  
19 application fee in an amount determined by the board, subject to the  
20 approval of the supreme court.

21 (c) The supreme court may adopt rules and procedures for  
22 issuing a certificate and for renewing, suspending, or revoking a  
23 certificate issued under this section. Any rules adopted by the  
24 supreme court under this section must:

25 (1) ensure compliance with the standards adopted under  
26 Section 111.041;

27 (2) provide that the board establish qualifications



1 for obtaining and maintaining certification;

2 (3) provide that the board issue certificates under  
3 this section;

4 (4) provide that a certificate expires on the second  
5 anniversary of the date the certificate is issued;

6 (5) prescribe procedures for accepting complaints and  
7 conducting investigations of alleged violations of the minimum  
8 standards adopted under Section 111.041 or other terms of the  
9 certification by certificate holders; and

10 (6) prescribe procedures by which the board, after  
11 notice and hearing, may suspend or revoke the certificate of a  
12 holder who fails to substantially comply with appropriate standards  
13 or other terms of the certification.

14 (d) If the requirements for issuing a certificate under this  
15 section include passage of an examination covering guardianship  
16 education requirements:

17 (1) the board shall develop and the director shall  
18 administer the examination; or

19 (2) the board shall direct the director to contract  
20 with another person or entity the board determines has the  
21 expertise and resources to develop and 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 board 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 employee of the Department of Aging and Disability  
11 Services who is applying for a certificate under this section to  
12 provide guardianship services to a ward of the department is exempt  
13 from payment of an application fee required by this section.

14          (g) An application fee or other fee collected under this  
15 section shall be deposited to the credit of the guardianship  
16 certification account in the general revenue fund and may be  
17 appropriated only to the Office of Court Administration for the  
18 administration and enforcement of this chapter.

19          (h) The Texas Department of Licensing and Regulation shall  
20 advise and assist the board as necessary in administering the  
21 certification process established under this section.

22          Sec. 111.043. INFORMATION FROM PRIVATE PROFESSIONAL  
23 GUARDIANS. In addition to the information submitted under Section  
24 697(e), Texas Probate Code, the director may require a private  
25 professional guardian or a person who represents or plans to  
26 represent the interests of a ward as a guardian on behalf of the  
27 private professional guardian to submit information considered

1 necessary to monitor the person's compliance with the applicable  
2 standards adopted under Section 111.041 or with the certification  
3 requirements of Section 111.042.

4 Sec. 111.044. ANNUAL DISCLOSURE. Not later than January 31  
5 of each year, each guardianship program and private professional  
6 guardian shall provide to the board a report containing for the  
7 preceding year:

8 (1) the total number of wards served by the  
9 guardianship program or private professional guardian, as  
10 applicable;

11 (2) the total amount of money received from this state  
12 for the provision of guardianship services; and

13 (3) the total amount of money received from any other  
14 public source, including a county or the federal government, for  
15 the provision of guardianship services.

16 SECTION 3.25. TRANSFERS TO THE DEPARTMENT OF AGING AND  
17 DISABILITY SERVICES. (a) On September 1, 2005:

18 (1) all powers, duties, functions, programs, and  
19 activities of the Department of Family and Protective Services  
20 related to providing guardianship services for incapacitated  
21 persons under Chapter 48, Human Resources Code, Chapter XIII, Texas  
22 Probate Code, or other law are transferred to the Department of  
23 Aging and Disability Services;

24 (2) all employees of the Department of Family and  
25 Protective Services who primarily perform duties related to  
26 providing guardianship services for incapacitated persons under  
27 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,

1 or other law become employees of the Department of Aging and  
2 Disability Services;

3 (3) a rule or form adopted by the executive  
4 commissioner of the Health and Human Services Commission that  
5 relates to the provision of guardianship services by the Department  
6 of Family and Protective Services for incapacitated persons under  
7 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
8 or other law, as those laws existed immediately before that date, is  
9 a rule or form of the Department of Aging and Disability Services  
10 and remains in effect until altered by the executive commissioner;

11 (4) a reference in law to the Department of Family and  
12 Protective Services or its predecessor agency, the Department of  
13 Protective and Regulatory Services, that relates to providing  
14 guardianship services for incapacitated persons under Chapter 48,  
15 Human Resources Code, Chapter XIII, Texas Probate Code, or other  
16 law means the Department of Aging and Disability Services;

17 (5) a waiver in effect that was issued by the  
18 Department of Family and Protective Services relating to the  
19 provision of guardianship services for incapacitated persons under  
20 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
21 or other law is continued in effect as a waiver of the Department of  
22 Aging and Disability Services;

23 (6) a proceeding involving the Department of Family  
24 and Protective Services that is related to providing guardianship  
25 services for incapacitated persons under Chapter 48, Human  
26 Resources Code, Chapter XIII, Texas Probate Code, or other law is  
27 transferred without change in status to the Department of Aging and

1 Disability Services, and the Department of Aging and Disability  
2 Services assumes, without a change in status, the position of the  
3 Department of Family and Protective Services in a proceeding  
4 relating to guardianship matters to which the Department of Family  
5 and Protective Services is a party;

6 (7) all money, contracts, rights, and obligations of  
7 the Department of Family and Protective Services related to  
8 providing guardianship services for incapacitated persons under  
9 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
10 or other law are transferred to the Department of Aging and  
11 Disability Services, subject to Subsection (b) of this section;

12 (8) all property and records in the custody of the  
13 Department of Family and Protective Services related to providing  
14 guardianship services for incapacitated persons under Chapter 48,  
15 Human Resources Code, Chapter XIII, Texas Probate Code, or other  
16 law shall be transferred to the Department of Aging and Disability  
17 Services; and

18 (9) all funds appropriated by the legislature to the  
19 Department of Family and Protective Services for purposes related  
20 to providing guardianship services for incapacitated persons under  
21 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,  
22 or other law are transferred to the Department of Aging and  
23 Disability Services.

24 (b) The Department of Aging and Disability Services shall  
25 administer a contract of the Department of Family and Protective  
26 Services transferred under Subdivision (7), Subsection (a) of this  
27 section, until the contract expires or is otherwise lawfully

1 terminated.

2 (c) To effectuate a smooth and orderly transfer of existing  
3 guardianship status, a court may not require the Department of  
4 Family and Protective Services or the Department of Aging and  
5 Disability Services to comply with the provisions concerning  
6 resignation of a guardian and appointment of a successor guardian  
7 under Subpart D, Part 4, Chapter XIII, Texas Probate Code, with  
8 respect to guardianship cases of the Department of Family and  
9 Protective Services transferred to the Department of Aging and  
10 Disability Services under this section and Section 3.26 of this  
11 article.

12 (d) A reference in a legal document, including a letter of  
13 guardianship issued under Section 659, Texas Probate Code, to the  
14 Department of Family and Protective Services as guardian in an  
15 existing guardianship or application for guardianship that is  
16 pending on the effective date of this Act is considered to be a  
17 reference to the Department of Aging and Disability Services.

18 (e) A public entity, a private entity, or any other person,  
19 including a bank, a service provider, law enforcement personnel, or  
20 medical personnel, is required to accept the Department of Aging  
21 and Disability Services' authority as guardian in the same manner  
22 the entity or person would have accepted the Department of Family  
23 and Protective Services' authority as guardian of a particular  
24 ward.

25 (f) The Department of Aging and Disability Services may not  
26 be required to take a new oath of guardianship under Section 700,  
27 Texas Probate Code, with respect to a guardianship case transferred

1 to the department from the Department of Family and Protective  
2 Services under this section and Section 3.26 of this article.

3 SECTION 3.26. TRANSITION PLAN. The executive commissioner  
4 of the Health and Human Services Commission shall establish a plan  
5 for the transfer of guardianship cases of the Department of Family  
6 and Protective Services to the Department of Aging and Disability  
7 Services on or before the period prescribed by the executive  
8 commissioner.

9 SECTION 3.27. PROPOSED RULES AND PROCEDURES. Not later  
10 than March 1, 2006, the Guardianship Certification Board  
11 established under Chapter 111, Government Code, as added by this  
12 article, shall develop rules and procedures for consideration by  
13 the supreme court as required by Chapter 111, Government Code, as  
14 added by this article.

15 SECTION 3.28. APPOINTMENT OF BOARD MEMBERS. (a) As soon  
16 as practicable after the effective date of this Act, the supreme  
17 court shall appoint 11 members who are not public members to the  
18 Guardianship Certification Board in accordance with Chapter 111,  
19 Government Code, as added by this article. In making the initial  
20 appointments, the supreme court shall designate three members for  
21 terms expiring February 1, 2007, four members for terms expiring  
22 February 1, 2009, and four members for terms expiring February 1,  
23 2011.

24 (b) As soon as practicable after the effective date of this  
25 Act, the supreme court shall appoint four public members to the  
26 Guardianship Certification Board in accordance with Chapter 111,  
27 Government Code, as added by this article. In making the initial

1 appointments, the supreme court shall designate two members for  
2 terms expiring February 1, 2007, one member for a term expiring  
3 February 1, 2009, and one member for a term expiring February 1,  
4 2011.

5 SECTION 3.29. EFFECTIVE DATE OF CERTIFICATION. A person is  
6 not required to hold a certificate issued under Subchapter C,  
7 Chapter 111, Government Code, as added by this article, to provide  
8 or continue to provide guardianship services to a ward before  
9 September 1, 2007.

10 ARTICLE 4. CERTAIN REQUIREMENTS AND LIMITATIONS RELATING TO  
11 MARRIAGE; PROVIDING CRIMINAL PENALTIES

12 SECTION 4.01. Article 38.10, Code of Criminal Procedure, is  
13 amended to read as follows:

14 Art. 38.10. EXCEPTIONS TO THE SPOUSAL ADVERSE TESTIMONY  
15 PRIVILEGE. The privilege of a person's spouse not to be called as a  
16 witness for the state does not apply in any proceeding in which the  
17 person is charged with:

18 (1) a crime committed against the person's spouse, a  
19 minor child, or a member of the household of either spouse; or

20 (2) an offense under Section 25.01, Penal Code  
21 (Bigamy).

22 SECTION 4.02. Subsections (e) and (f), Section 22.011,  
23 Penal Code, are amended to read as follows:

24 (e) It is an affirmative defense to prosecution under  
25 Subsection (a)(2) that:

26 (1) the actor was not more than three years older than  
27 the victim and at the time of the offense:



1 (A) was not required under Chapter 62, Code of  
2 Criminal Procedure, [~~as added by Chapter 668, Acts of the 75th~~  
3 ~~Legislature, Regular Session, 1997,~~] to register for life as a sex  
4 offender; or

5 (B) was not a person who under Chapter 62, Code of  
6 Criminal Procedure, had a reportable conviction or adjudication for  
7 an offense under this section; and

8 (2) the victim:

9 (A) was a child of 14 years of age or older; and

10 (B) was not a person whom the actor was  
11 prohibited from marrying or purporting to marry or with whom the  
12 actor was prohibited from living under the appearance of being  
13 married under Section 25.01.

14 (f) An offense under this section is a felony of the second  
15 degree, except that an offense under this section is a felony of the  
16 first degree if the victim was a person whom the actor was  
17 prohibited from marrying or purporting to marry or with whom the  
18 actor was prohibited from living under the appearance of being  
19 married under Section 25.01.

20 SECTION 4.03. Subsections (c) and (e), Section 25.01, Penal  
21 Code, are amended to read as follows:

22 (c) It is a defense to prosecution under Subsection (a)(1)  
23 that the actor reasonably believed at the time of the commission of  
24 the offense that the actor and the person whom the actor married or  
25 purported to marry or with whom the actor lived under the appearance  
26 of being married were legally eligible to be married because the  
27 actor's prior [~~his~~] marriage was void or had been dissolved by

1 death, divorce, or annulment. For purposes of this subsection, an  
2 actor's belief is reasonable if the belief is substantiated by a  
3 certified copy of a death certificate or other signed document  
4 issued by a court.

5 (e) An offense under this section is a felony of the third  
6 degree, except that if at the time of the commission of the offense,  
7 the person whom the actor marries or purports to marry or with whom  
8 the actor lives under the appearance of being married is:

9 (1) 16 years of age or older, the offense is a felony  
10 of the second degree; or

11 (2) younger than 16 years of age, the offense is a  
12 felony of the first degree [~~Class A misdemeanor~~].

13 SECTION 4.04. Subsections (a) and (c), Section 25.02, Penal  
14 Code, are amended to read as follows:

15 (a) A person [~~An individual~~] commits an offense if the  
16 person [~~he~~] engages in sexual intercourse or deviate sexual  
17 intercourse with another [~~a~~] person the actor [~~he~~] knows to be,  
18 without regard to legitimacy:

19 (1) the actor's [~~his~~] ancestor or descendant by blood  
20 or adoption;

21 (2) the actor's current or former [~~his~~] stepchild or  
22 stepparent[~~, while the marriage creating that relationship~~  
23 ~~exists~~];

24 (3) the actor's [~~his~~] parent's brother or sister of the  
25 whole or half blood;

26 (4) the actor's [~~his~~] brother or sister of the whole or  
27 half blood or by adoption; [~~or~~]

1           (5) the children of the actor's [~~his~~] brother or sister  
2 of the whole or half blood or by adoption; or

3           (6) the son or daughter of the actor's aunt or uncle of  
4 the whole or half blood or by adoption.

5           (c) An offense under this section is a felony of the third  
6 degree, unless the offense is committed under Subsection (a)(6), in  
7 which event the offense is a felony of the second degree.

8           SECTION 4.05. Section 2.004, Family Code, is amended by  
9 amending Subsection (b) and adding Subsections (c) and (d) to read  
10 as follows:

11           (b) The application form must contain:

12           (1) a heading entitled "Application for Marriage  
13 License, \_\_\_\_\_ County, Texas";

14           (2) spaces for each applicant's full name, including  
15 the woman's maiden surname, address, social security number, if  
16 any, date of birth, and place of birth, including city, county, and  
17 state;

18           (3) a space for indicating the document tendered by  
19 each applicant as proof of identity and age;

20           (4) spaces for indicating whether each applicant has  
21 been divorced within the last 30 days;

22           (5) printed boxes for each applicant to check "true"  
23 or "false" in response to the following statement: "I am not  
24 presently married and the other applicant is not presently  
25 married.";

26           (6) printed boxes for each applicant to check "true"  
27 or "false" in response to the following statement: "The other

1 applicant is not related to me as:

2 (A) an ancestor or descendant, by blood or  
3 adoption;

4 (B) a brother or sister, of the whole or half  
5 blood or by adoption;

6 (C) a parent's brother or sister, of the whole or  
7 half blood or by adoption; ~~or~~

8 (D) a son or daughter of a brother or sister, of  
9 the whole or half blood or by adoption;

10 (E) a current or former stepchild or stepparent;  
11 or

12 (F) a son or daughter of a parent's brother or  
13 sister, of the whole or half blood or by adoption.";

14 (7) printed boxes for each applicant to check "true"  
15 or "false" in response to the following statement: "I am not  
16 presently delinquent in the payment of court-ordered child  
17 support.";

18 (8) a printed oath reading: "I SOLEMNLY SWEAR (OR  
19 AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS  
20 CORRECT.";

21 (9) spaces immediately below the printed oath for the  
22 applicants' signatures;

23 (10) a certificate of the county clerk that:

24 (A) each applicant made the oath and the date and  
25 place that it was made; or

26 (B) an applicant did not appear personally but  
27 the prerequisites for the license have been fulfilled as provided

1 by this chapter;

2 (11) spaces for indicating the date of the marriage  
3 and the county in which the marriage is performed; and

4 (12) a space for the address to which the applicants  
5 desire the completed license to be mailed.

6 (c) An applicant commits an offense if the applicant  
7 knowingly provides false information under Subsection (b)(1), (2),  
8 (3), or (4). An offense under this subsection is a Class C  
9 misdemeanor.

10 (d) An applicant commits an offense if the applicant  
11 knowingly provides false information under Subsection (b)(5) or  
12 (6). An offense under this subsection is a Class A misdemeanor.

13 SECTION 4.06. Section 2.005, Family Code, is amended by  
14 adding Subsection (c) to read as follows:

15 (c) A person commits an offense if the person knowingly  
16 provides false, fraudulent, or otherwise inaccurate proof of an  
17 applicant's identity or age under this section. An offense under  
18 this subsection is a Class A misdemeanor.

19 SECTION 4.07. Section 2.007, Family Code, is amended to  
20 read as follows:

21 Sec. 2.007. AFFIDAVIT OF ABSENT APPLICANT. The affidavit  
22 of an absent applicant must include:

23 (1) the absent applicant's full name, including the  
24 maiden surname of a female applicant, address, date of birth, place  
25 of birth, including city, county, and state, citizenship, and  
26 social security number, if any;

27 (2) a declaration that the absent applicant has not

1 been divorced within the last 30 days;

2 (3) a declaration that the absent applicant is:

3 (A) not presently married; or

4 (B) married to the other applicant and they wish  
5 to marry again;

6 (4) a declaration that the other applicant is not  
7 presently married and is not related to the absent applicant as:

8 (A) an ancestor or descendant, by blood or  
9 adoption;

10 (B) a brother or sister, of the whole or half  
11 blood or by adoption;

12 (C) a parent's brother or sister, of the whole or  
13 half blood or by adoption; [~~or~~]

14 (D) a son or daughter of a brother or sister, of  
15 the whole or half blood or by adoption;

16 (E) a current or former stepchild or stepparent;  
17 or

18 (F) a son or daughter of a parent's brother or  
19 sister, of the whole or half blood or by adoption;

20 (5) a declaration that the absent applicant desires to  
21 marry and the name, age, and address of the person to whom the  
22 absent applicant desires to be married;

23 (6) the approximate date on which the marriage is to  
24 occur;

25 (7) the reason the absent applicant is unable to  
26 appear personally before the county clerk for the issuance of the  
27 license; and

1           (8) if the absent applicant will be unable to attend  
2 the ceremony, the appointment of any adult, other than the other  
3 applicant, to act as proxy for the purpose of participating in the  
4 ceremony.

5           SECTION 4.08. Subsections (a) and (b), Section 2.009,  
6 Family Code, are amended to read as follows:

7           (a) Except as provided by Subsections (b) and (d), the  
8 county clerk may not issue a license if either applicant:

9                 (1) fails to provide the information required by this  
10 subchapter;

11                 (2) fails to submit proof of age and identity;

12                 (3) is under 16 [~~14~~] years of age and has not been  
13 granted a court order as provided by Section 2.103;

14                 (4) is 16 [~~14~~] years of age or older but under 18 years  
15 of age and has not presented at least one of the following:

16                         (A) parental consent as provided by Section  
17 2.102;

18                         (B) documents establishing that a prior marriage  
19 of the applicant has been dissolved; or

20                         (C) a court order as provided by Section 2.103;

21                 (5) checks "false" in response to a statement in the  
22 application, except as provided by Subsection (b) or (d), or fails  
23 to make a required declaration in an affidavit required of an absent  
24 applicant; or

25                 (6) indicates that the applicant has been divorced by  
26 a decree of a court of this state within the last 30 days, unless:

27                         (A) the applicants were divorced from each other;

1 or

2 (B) the prohibition against remarriage is waived  
3 as provided by Section 6.802.

4 (b) If an applicant checks "false" in response to the  
5 statement "I am not presently married and the other applicant is not  
6 presently married," the county clerk shall inquire as to whether  
7 the applicant is presently married to the other applicant. If the  
8 applicant states that the applicant is currently married to the  
9 other applicant, the county clerk shall record that statement on  
10 the license before the administration of the oath. The county clerk  
11 may not refuse to issue a license on the ground that the applicants  
12 are already married to each other.

13 SECTION 4.09. Section 2.102, Family Code, is amended by  
14 amending Subsection (a) and adding Subsections (g) and (h) to read  
15 as follows:

16 (a) If an applicant is 16 [~~14~~] years of age or older but  
17 under 18 years of age, the county clerk shall issue the license if  
18 parental consent is given as provided by this section.

19 (g) A person commits an offense if the person knowingly  
20 provides parental consent for an underage applicant under this  
21 section and the person is not a parent or a judicially designated  
22 managing conservator or guardian of the applicant. An offense  
23 under this subsection is a Class A misdemeanor.

24 (h) A parent or judicially designated managing conservator  
25 or guardian of an applicant commits an offense if the parent,  
26 managing conservator, or guardian knowingly provides parental  
27 consent under this section for an applicant who is younger than 16



1 years of age or who is presently married to a person other than the  
2 person the applicant desires to marry. An offense under this  
3 subsection is a felony of the third degree.

4 SECTION 4.10. Section 2.202, Family Code, is amended by  
5 adding Subsections (c) and (d) to read as follows:

6 (c) Except as provided by Subsection (d), a person commits  
7 an offense if the person knowingly conducts a marriage ceremony  
8 without authorization under this section. An offense under this  
9 subsection is a Class A misdemeanor.

10 (d) A person commits an offense if the person knowingly  
11 conducts a marriage ceremony of a minor whose marriage is  
12 prohibited by law or of a person who by marrying commits an offense  
13 under Section 25.01, Penal Code. An offense under this subsection  
14 is a felony of the third degree.

15 SECTION 4.11. Section 2.302, Family Code, is amended to  
16 read as follows:

17 Sec. 2.302. CEREMONY CONDUCTED BY UNAUTHORIZED PERSON. The  
18 validity of a marriage is not affected by the lack of authority of  
19 the person conducting the marriage ceremony if:

20 (1) there was a reasonable appearance of authority by  
21 that person; ~~and~~

22 (2) at least one party to the marriage participated in  
23 the ceremony in good faith and that party treats the marriage as  
24 valid; and

25 (3) neither party to the marriage:

26 (A) is a minor whose marriage is prohibited by  
27 law; or

1                   (B) by marrying commits an offense under Section  
2 25.01, Penal Code.

3           SECTION 4.12. Section 2.401, Family Code, is amended by  
4 adding Subsection (d) to read as follows:

5           (d) A person may not be a party to an informal marriage or  
6 execute a declaration of an informal marriage if the person is  
7 presently married to a person who is not the other party to the  
8 informal marriage or declaration of an informal marriage, as  
9 applicable.

10          SECTION 4.13. Subsection (b), Section 2.402, Family Code,  
11 is amended to read as follows:

12           (b) The declaration form must contain:

13                   (1) a heading entitled "Declaration and Registration  
14 of Informal Marriage, \_\_\_\_\_ County, Texas";

15                   (2) spaces for each party's full name, including the  
16 woman's maiden surname, address, date of birth, place of birth,  
17 including city, county, and state, and social security number, if  
18 any;

19                   (3) a space for indicating the type of document  
20 tendered by each party as proof of age and identity;

21                   (4) printed boxes for each party to check "true" or  
22 "false" in response to the following statement: "The other party is  
23 not related to me as:

24                           (A) an ancestor or descendant, by blood or  
25 adoption;

26                           (B) a brother or sister, of the whole or half  
27 blood or by adoption;

1 (C) a parent's brother or sister, of the whole or  
2 half blood or by adoption; [~~or~~]

3 (D) a son or daughter of a brother or sister, of  
4 the whole or half blood or by adoption;

5 (E) a current or former stepchild or stepparent;  
6 or

7 (F) a son or daughter of a parent's brother or  
8 sister, of the whole or half blood or by adoption.";

9 (5) a printed declaration and oath reading: "I  
10 SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO  
11 EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE  
12 AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS  
13 HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE  
14 WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE  
15 NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND  
16 THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

17 (6) spaces immediately below the printed declaration  
18 and oath for the parties' signatures; and

19 (7) a certificate of the county clerk that the parties  
20 made the declaration and oath and the place and date it was made.

21 SECTION 4.14. Section 2.403, Family Code, is amended to  
22 read as follows:

23 Sec. 2.403. PROOF OF IDENTITY AND AGE; OFFENSE. (a) The  
24 county clerk shall require proof of the identity and age of each  
25 party to the declaration of informal marriage to be established by a  
26 certified copy of the party's birth certificate or by some  
27 certificate, license, or document issued by this state or another

1 state, the United States, or a foreign government.

2 (b) A person commits an offense if the person knowingly  
3 provides false, fraudulent, or otherwise inaccurate proof of the  
4 person's identity or age under this section. An offense under this  
5 subsection is a Class A misdemeanor.

6 SECTION 4.15. Section 6.101, Family Code, is amended to  
7 read as follows:

8 Sec. 6.101. ANNULMENT OF MARRIAGE OF PERSON UNDER AGE 16  
9 [~~14~~]. (a) The court may grant an annulment of a licensed marriage  
10 of a person under 16 [~~14~~] years of age unless a court order has been  
11 obtained as provided in Subchapter B, Chapter 2.

12 (b) A petition for annulment under this section may be filed  
13 by a next friend for the benefit of a person under 16 [~~14~~] years of  
14 age or on the petition of the parent or the judicially designated  
15 managing conservator or guardian, whether an individual,  
16 authorized agency, or court, of the person.

17 (c) A suit by a parent, managing conservator, or guardian of  
18 the person may be brought at any time before the person is 16 [~~14~~]  
19 years of age.

20 (d) A suit under this section to annul the marriage of a  
21 person 16 [~~14~~] years of age or older that was entered into before  
22 the person was 16 [~~14~~] years of age is barred unless the suit is  
23 filed within the later of:

24 (1) 90 days after the date the petitioner knew or  
25 should have known of the marriage; or

26 (2) 90 days after the date of the 16th [~~14th~~] birthday  
27 of the underage party.

1 SECTION 4.16. Subsection (a), Section 6.102, Family Code,  
2 is amended to read as follows:

3 (a) The court may grant an annulment of a licensed or  
4 informal marriage of a person 16 [~~14~~] years of age or older but  
5 under 18 years of age that occurred without parental consent or  
6 without a court order as provided by Subchapters B and E, Chapter 2.

7 SECTION 4.17. Subchapter C, Chapter 6, Family Code, is  
8 amended by adding Sections 6.205 and 6.206 to read as follows:

9 Sec. 6.205. MARRIAGE TO MINOR. A marriage is void if either  
10 party to the marriage is younger than 16 years of age.

11 Sec. 6.206. MARRIAGE TO STEPCHILD OR STEPPARENT. A  
12 marriage is void if a party is a current or former stepchild or  
13 stepparent of the other party.

14 SECTION 4.18. Under the terms of Subsection (b), Section  
15 22.109, Government Code, Rule 504(b)(1), Texas Rules of Evidence,  
16 is disapproved to the extent that the rule conflicts with Article  
17 38.10, Code of Criminal Procedure, as amended by this article.

18 SECTION 4.19. The changes in law made by this article in  
19 amending Article 38.10, Code of Criminal Procedure, and Sections  
20 22.011, 25.01, and 25.02, Penal Code, apply only to an offense  
21 committed on or after the effective date of this Act. An offense  
22 committed before the effective date of this Act is covered by the  
23 law in effect at the time the offense was committed, and the former  
24 law is continued in effect for that purpose. For purposes of this  
25 section, an offense was committed before the effective date of this  
26 Act if any element of the offense was committed before that date.

27 SECTION 4.20. The changes in law made by this article to

1 Sections 2.004, 2.005, 2.007, 2.009, and 2.102, Family Code, apply  
2 only to an application for a marriage license filed on or after the  
3 effective date of this Act. An application filed before the  
4 effective date of this Act is governed by the law in effect on the  
5 date the application was filed, and the former law is continued in  
6 effect for that purpose.

7 SECTION 4.21. The changes in law made by this article to  
8 Sections 2.202 and 2.302, Family Code, apply only to a marriage  
9 ceremony that is conducted on or after the effective date of this  
10 Act. A marriage ceremony conducted before the effective date of  
11 this Act is governed by the law in effect on the date the ceremony  
12 was conducted, and the former law is continued in effect for that  
13 purpose.

14 SECTION 4.22. Subsection (d), Section 2.401, Family Code,  
15 as added by this article, applies to an informal marriage or a  
16 declaration of an informal marriage regardless of when the informal  
17 marriage was entered into or the declaration was executed.

18 SECTION 4.23. The changes in law made by this article to  
19 Subsection (b), Section 2.402, and Section 2.403, Family Code,  
20 apply to a declaration of an informal marriage executed on or after  
21 the effective date of this Act. A declaration executed before the  
22 effective date of this Act is governed by the law in effect on the  
23 date the declaration was executed, and the former law is continued  
24 in effect for that purpose.

25 SECTION 4.24. The changes in law made by this article by the  
26 amendment of Section 6.101 and Subsection (a), Section 6.102,  
27 Family Code, and the enactment of Sections 6.205 and 6.206, Family

1 Code, apply only to a marriage entered into on or after the  
2 effective date of this Act. A marriage entered into before the  
3 effective date of this Act is governed by the law in effect on the  
4 date the marriage was entered into, and the former law is continued  
5 in effect for that purpose.

6 ARTICLE 5. REPORT; EFFECTIVE DATE

7 SECTION 5.01. (a) Not later than the 180th day after the  
8 effective date of this Act, and every six months after that date,  
9 the Health and Human Services Commission shall provide a detailed  
10 progress report on the implementation of the provisions of this Act  
11 to:

- 12 (1) the governor;
- 13 (2) the Legislative Budget Board;
- 14 (3) the lieutenant governor;
- 15 (4) the speaker of the house of representatives;
- 16 (5) appropriate oversight committees of the  
17 legislature; and
- 18 (6) the state auditor.

19 (b) Each progress report must address:

- 20 (1) the achievement status of each major element of  
21 reform and each of the performance milestones specified in this  
22 Act;
- 23 (2) any significant obstacles encountered by the  
24 Health and Human Services Commission, Department of Family and  
25 Protective Services, or Department of Aging and Disability Services  
26 in implementing the provisions of this Act, and the steps proposed  
27 to resolve those obstacles;

1           (3) any provision of this Act the Health and Human  
2 Services Commission, Department of Family and Protective Services,  
3 or Department of Aging and Disability Services determines that it  
4 is unable to fully implement due to insufficient funds;

5           (4) any significant unanticipated fiscal implications  
6 associated with the implementation of this Act, and recommendations  
7 for addressing the fiscal implications in the most cost-effective  
8 manner; and

9           (5) steps taken to enhance internal and external  
10 accountability for:

11           (A) achieving favorable outcomes for children  
12 needing protective services and adults needing protective services  
13 or guardianship services; and

14           (B) the expenditure of public funds.

15           (c) In accordance with Chapter 321, Government Code, the  
16 state auditor may conduct financial and compliance audits related  
17 to the implementation of this Act as specified in an audit plan.  
18 The state auditor shall coordinate an audit performed under this  
19 subsection with the Health and Human Services Commission,  
20 Department of Family and Protective Services, and Department of  
21 Aging and Disability Services internal auditors and the  
22 commission's office of inspector general to avoid duplication of  
23 effort.

24           (d) Except as provided by this subsection, this section  
25 expires September 1, 2010. Subsections (a) and (b) of this section  
26 expire September 1, 2009.

27           SECTION 5.02. This Act takes effect September 1, 2005.



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 6 passed the Senate on March 3, 2005, by the following vote: Yeas 30, Nays 0; April 26, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 28, 2005, House granted request of the Senate; May 29, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 6 passed the House, with amendments, on April 20, 2005, by the following vote: Yeas 135, Nays 6, two present not voting; April 28, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by the following vote: Yeas 124, Nays 20, three present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor