

BILL ANALYSIS

Senate Research Center

S.B. 221
By: Nelson
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 221 is intended to better protect the state's elderly and disabled populations by strengthening the authority of Adult Protective Services. This bill clarifies that "exploitation" includes attempted exploitation and using a client's personal information (e.g., identity) for personal or monetary gain. This bill extends the duration of an emergency order for protective services from 72 hours to 10 days and allows a second 30-day extension of the order. This bill clarifies that protective services may be provided to a caregiver if necessary to prevent the victim from returning to a state of abuse or neglect. This bill requires the Department of Family and Protective Services to notify law enforcement if an investigation of a state supported living center resident suggests criminal conduct and increases the penalty for a false report of adult abuse or neglect from a Class B misdemeanor to a Class A misdemeanor.

S.B. 221 amends current law relating to the Department of Family and Protective Services, including protective services and investigations of alleged abuse, neglect, or exploitation for certain adults who are elderly or disabled, and provides a criminal penalty.

[**Note:** While the statutory reference in this bill is to the Texas Department of Protective and Regulatory Services (DPRS), the following amendments affect the Department of Family and Protective Services, as the successor agency to DPRS.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Board of Protective and Regulatory Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 411.114, Government Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 6 (Section 48.002, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 59.006(a), Finance Code, to provide that this section does not apply to and does not require or authorize a financial institution to give a customer notice of certain demands and requests, including a record request from or report to a government agency arising out of the investigation or prosecution of a criminal offense or the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code.

SECTION 2. Amends Section 411.114, Government Code, as follows:

Sec. 411.114. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES.
(a)(1) Makes no changes to this subdivision.

(2) Requires the Department of Family and Protective Services (DFPS) to obtain from the Department of Public Safety of the State of Texas (DPS)

criminal history record information maintained by DPS that relates to a certain person, including a person who is an alleged perpetrator in, rather than a person who is the subject of, a report DFPS receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that the report alleges the person has engaged in conduct that meets the applicable definition, rather than the statutory definition, of abuse, neglect, or exploitation under Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, or Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code, and the person is not also the victim of the alleged conduct. Makes conforming and nonsubstantive changes.

(3) Entitles DFPS, rather than the Department of Protective and Regulatory Services (DPRS), to obtain from DPS criminal history record information maintained by DPS that relates to a person who is, among other certain persons, a person, other than an alleged perpetrator in, rather than the subject of, a report described in Subdivision (2)(I) living in the residence in which the alleged victim of the report resides; or an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with DFPS and has access to confidential information in DPS's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information. Makes conforming and nonsubstantive changes.

(4) Entitles DFPS, subject to Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), to obtain certain criminal history record information, including information that pertains to a person described by Subdivision (2) or (3). Makes conforming changes.

(5) Prohibits DFPS from using the authority granted under this section to harass an employee or volunteer. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than the Board of Protective and Regulatory Services, to adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) Makes conforming changes.

(7) Provides that DFPS is not prohibited from releasing criminal history record information obtained under this section to certain persons or entities, including an adult who resides with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if the alleged perpetrator is the subject of the criminal history record information, and DFPS determines that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim or the adult; or an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if the alleged perpetrator is the subject of the criminal history information, and DFPS determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person. Makes conforming and nonsubstantive changes.

(b)-(c) Makes conforming changes.

SECTION 3. Amends Section 142.018(a), Health and Safety Code, to redefine, in this section, "abuse," "exploitation," and "neglect."

SECTION 4. Amends Section 40.0315(b), Human Resources Code, as follows:

(b) Requires an investigator in the unit to determine whether an elderly or disabled person who is the subject of a report made under Section 48.051(a) (relating to requiring a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation to report immediately), has suffered abuse, neglect, or exploitation as a result of the criminal conduct of another person. Requires the investigator, if the investigator determines that criminal conduct may have occurred, to immediately notify:

(1) the Health and Human Services Commission's office of inspector general (HHSC; inspector general) if the disabled person who is the subject of the report resides in a state supported living center or the ICF-MR component of the Rio Grande State Center; and, rather than or,

(2) the appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to DFPS.

SECTION 5. Amends Sections 48.002(a)(3) and (5), Human Resources Code, to redefine "exploitation" and "protective services."

SECTION 6. Amends Section 48.002, Human Resources Code, by adding Subsection (c) to authorize the executive commissioner, except as provided by Subsection (b), by rule to adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the definitions of those terms under Subsection (a), for purposes of conducting an investigation under this chapter or Chapter 142 (Home and Community Support Services), Health and Safety Code.

SECTION 7. Amends Section 48.006(a), Human Resources Code, to require DPRS, in each region, to send a community satisfaction survey at least biennially, rather than annually, to certain stakeholders, agencies, and courts.

SECTION 8. Amends Section 48.053, Human Resources Code, as follows:

Sec. 48.053. FALSE REPORT; PENALTY. (a) Creates this subsection from existing text. Makes no further changes.

(b) Creates this subsection from existing text. Provides that an offense under this section is a Class A, rather than a Class B, misdemeanor.

SECTION 9. Amends Section 48.151(a), Human Resources Code, to require DFPS, not later than 24 hours after the department receives a report of an allegation of abuse, neglect, or exploitation under Section 48.051, to initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for protective services, unless DFPS determines that the report is frivolous or patently without a factual basis, or does not concern abuse, neglect, or exploitation, as those terms are defined by rules adopted by the executive commissioner under Section 48.002(c), except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a) are required to be used, rather than as those terms are defined by Section 48.002.

SECTION 10. Amends Section 48.152, Human Resources Code, as follows:

Sec. 48.152. INVESTIGATION. (a) Creates this subsection from existing text. Requires DPRS, if the elderly or disabled person refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, to continue the investigation by interviewing other persons thought to have knowledge relevant to the investigation.

(b)-(c) Creates these subsections from existing text. Makes no further changes.

SECTION 11. Amends Section 48.1522, Human Resources Code, as follows:

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Requires the caseworker or supervisor, except as provided by Subsection (b), if during the course of DPRS's or another state agency's investigation of a reported abuse, neglect, or exploitation a caseworker of DPRS or other state agency, as applicable, or the caseworker's supervisor has cause to believe that the elderly or disabled person has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, to immediately notify an appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to DPRS, and provide the law enforcement agency with a copy of the investigation report of DPRS or other state agency, as applicable, in a timely manner.

(b) Requires a caseworker, if during the course of DPRS's investigation of reported abuse, neglect or exploitation a caseworker of DPRS or the caseworker's supervisor has cause to believe that a disabled person who is a resident or client of a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, in addition to the report to the appropriate law enforcement agency required by Subsection (a), to immediately notify the inspector general and promptly provide the inspector general with a copy of DPRS's investigation report.

SECTION 12. Amends Sections 48.154(a), (b), (c), (d), and (e), Human Resources Code, as follows:

(a) Requires that DPRS or another state agency, as appropriate, have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of DPRS's or state agency's duties under this chapter. Provides that the duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. Requires a person, agency, or institution that has a record or document that DPRS or the state agency needs to perform its duties under this chapter to, without unnecessary delay, make the record or document available to DPRS or the state agency that requested the record or document. Makes a nonsubstantive change.

(b) Provides that DPRS is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person, agency, or institution or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by DPRS.

(c) Makes a conforming change.

(d) Requires the court, on good cause shown, to order the person, agency or institution who has a requested record or document to allow DPRS or state agency to have access to that record or document under the terms and conditions prescribed by the court, rather than requires the court, on good cause shown, to order the person who denied access to a record or document to allow DPRS or agency to have access under the terms and conditions prescribed by the court.

(e) Entitles a person, agency, or institution who has a requested record or document to notice and a hearing on a petition filed under this section. Makes a nonsubstantive change.

SECTION 13. Amends Section 48.203(d), Human Resources Code, to provide that, except as provided by Section 48.208 (Emergency Order for Protective Services), if an elderly or disabled person withdraws from or refuses consent to voluntary protective services the services may not be provided.

SECTION 14. Amends Section 48.204, Human Resources Code, to authorize a protective services agency to furnish protective services to an elderly or disabled person with the person's consent or to a relative or caretaker of an elderly or disabled person on behalf of the elderly or disabled person with the relative's or caregiver's consent or, if the elderly or disabled person lacks the capacity to consent, without that person's consent as provided by this chapter.

SECTION 15. Amends Section 48.208, Human Resources Code, by amending Subsections (e), (e-2), (f), and (h) and adding Subsection (i), as follows:

(e) Provides that the emergency order expires on the earlier of the end of the 10th day after the date the order is rendered or the end of the 10th day after the date the person was removed to safer surroundings if the emergency order was rendered subsequent to the removal of the person to safer surroundings in accordance with Subsection (h), rather than at the end of 72 hours from the time the order is rendered, unless:

(1) the emergency order terminates as provided by Subsection (e-1) (relating to the emergency order terminating if the physician's opinion does not indicate abuse or that there is capacity for consent);

(2) the 10-day period, rather than 72-hour period, ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4 p.m. on the first succeeding business day; or

(3) the court extends the order as provided by Subsection (e-2).

(e-2) Authorizes the court, after notice and a hearing, to extend an emergency order issued under this section for a period of not more than 30 days after the date the original emergency order for protective services was rendered. Authorizes the court, after notice and a hearing for good cause shown, to grant a second extension of an emergency order of not more than an additional 30 days. Prohibits the court from granting more than two extensions of the original emergency order. Provides that an extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. Authorizes the court to modify or terminate the emergency order on petition of DPRS, the incapacitated person, or any person interested in the person's welfare. Makes a nonsubstantive change.

(f) Provides that any medical facility, emergency medical services provider, or physician who provides treatment to or who transports an elderly or disabled person pursuant to an emergency order under Subsection (d) (relating to the court's options on finding reasonable cause of abuse, neglect, or exploitation) or an emergency authorization under Subsection (h), rather than this chapter, is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician. Makes a nonsubstantive change.

(h) Authorizes DPRS, if DPRS cannot obtain an emergency order under this section because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m., to remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly or disabled person to safer surroundings, authorize medical treatment, or authorize, rather than order, or provide other available services necessary to remove conditions creating the threat to life or physical safety. Requires DPRS to obtain an emergency order under this section not later than 4 p.m. on the first succeeding business day after the date on which protective services are provided. Requires DPRS, if DPRS does not obtain an emergency order, to cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place.

(i) Requires DPRS, if DPRS's removal of a person from the person's place of residence under this section results in that residence being vacant, to notify the appropriate law

enforcement agency of the vacancy to facilitate the law enforcement agency's monitoring of the residence.

SECTION 16. Amends Sections 48.405(a) and (b), Human Resources Code, as follows:

(a) Requires DFPS or its designee, if the employee requests a hearing, to set a hearing, give written notice of the hearing to the employee, and designate an administrative law judge, rather than a hearings examiner, to conduct the hearing.

(b) Requires the administrative law judge, rather than the hearings examiner, to make findings of fact and conclusions of law and to promptly issue an order regarding the occurrence of the reportable conduct, rather than to promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the reportable conduct.

SECTION 17. Repealer: Section 48.405(c) (relating to a finding that reportable conduct has occurred under certain circumstances), Human Resources Code.

SECTION 18. Makes application of the change made by this Act to Section 48.053, Human Resources Code, prospective.

SECTION 19. Makes application of Section 48.405, Human Resources Code, prospective.

SECTION 20. Effective date: September 1, 2011.