

BILL ANALYSIS

C.S.S.B. 221
By: Nelson
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that certain statutes are inadequate to protect the state's elderly and disabled populations and that legislation is needed to strengthen the protections for these vulnerable citizens. C.S.S.B. 221 seeks to address these concerns by amending 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 by enhancing the penalty for an offense relating to a false report of abuse, neglect, or exploitation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 6 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.S.B. 221 amends the Finance Code to include a record request from or report to a government agency arising out of the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in the information to which provisions regarding discovery of customer records do not apply and of which a financial institution is not required or authorized to give a customer notice.

C.S.S.B. 221 amends the Government Code to clarify that the Department of Family and Protective Services (DFPS) is required to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who is an alleged perpetrator in, rather than to a person who is the subject of, a report DFPS receives alleging that a person has abused, neglected, or exploited a child, an elderly person, or a person with a disability and makes conforming changes. The bill requires, in a provision establishing the conditions under which DFPS is required to obtain such criminal history record information, the report of abuse, neglect, or exploitation to allege that the person engaged in conduct that meets the definition of abuse, neglect, or exploitation applicable through executive commissioner rule authorized by the bill, as an alternative to meeting the statutory definition of abuse, neglect, or exploitation under provisions of law relating to an investigation of a report of child abuse or neglect, and requires the definitions provided under those provisions of law to be used if the

executive commissioner has not adopted applicable rules.

C.S.S.B. 221 entitles DFPS to obtain from DPS criminal history record information maintained by DPS that relates to a person who is 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. The bill includes certain persons for whom DFPS is entitled to obtain from DPS criminal history record information maintained by DPS among the persons for whom DFPS is entitled to obtain criminal history record information maintained or indexed by the FBI.

C.S.S.B. 221 clarifies that DFPS is not prohibited from releasing criminal history record information that DFPS is required or entitled to obtain to an adult who resides with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or a person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation, rather than to an adult residing with a child, elderly person, or person with a disability and the person who is the subject of the criminal history record information. The bill makes the authorization to release such criminal history record information contingent on the alleged perpetrator, rather than the person, being the subject of the criminal history record information and on DFPS determining that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim or the adult, rather than the safety or welfare of the child, elderly person, or person with a disability or adult.

C.S.S.B. 221 includes among the persons to whom DFPS is authorized to release such criminal history record information 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 record information and DFPS determines that the release of the information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.

C.S.S.B. 221 amends the Human Resources Code to clarify that an investigator in the investigation unit for adult protective services who determines that abuse, neglect, or exploitation suffered by an elderly or disabled person may have resulted from criminal conduct is required to immediately notify both the office of inspector general of the Health and Human Services Commission (HHSC) and the appropriate law enforcement agency, rather than either the commission's office of inspector general or the appropriate law enforcement agency, and provides that the investigator is not required to immediately notify an appropriate law enforcement agency if the law enforcement agency reported the alleged abuse, neglect, or exploitation to DFPS. The bill specifies that a caseworker of DFPS or other state agency or the caseworker's supervisor who, during the course of an investigation of reported abuse, neglect, or exploitation of an elderly or disabled person, has cause to believe that the person was abused, neglected, or exploited by another person in a manner that constitutes a criminal offense is required to immediately notify an appropriate law enforcement agency unless the law enforcement agency reported the alleged abuse, neglect, or exploitation. The bill specifies that the requirement that a caseworker or the caseworker's supervisor notify the office of inspector general of HHSC and provide the office with a copy of the investigation report if an alleged case of abuse, neglect, or exploitation may have involved a criminal offense is in addition to the requirement that the caseworker provide a copy of the investigation report to an appropriate law enforcement agency.

C.S.S.B. 221 redefines "exploitation" to include an act that involves using, or attempting to use, the resources of the elderly or disabled person and includes the person's social security number or other identifying information among those resources. The bill redefines "protective services" to include the services furnished by DFPS or by a protective services agency to a relative or caretaker of an elderly or disabled person if DFPS determines the services are necessary to prevent the elderly or disabled person from returning to a state of abuse, neglect, or exploitation.

The bill includes respite services in the services included in that definition and establishes that the term does not include the services of DFPS or another protective services agency in conducting an investigation regarding alleged abuse, neglect, or exploitation of an elderly or disabled person.

C.S.S.B. 221 authorizes the executive commissioner of HHSC by rule to adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the existing definitions of those terms for purposes of conducting an investigation of a report of an allegation of abuse, neglect, or exploitation of elderly or disabled persons.

C.S.S.B. 221 amends the Health and Safety Code to specify, for purposes of provisions relating to reports of abuse, exploitation, and neglect relating to a home and community support services license, that "abuse," "exploitation," and "neglect" have the meanings applicable through executive commissioner rule and requires the statutory definitions of those terms under provisions of law relating to investigations and protective services for elderly and disabled persons to be used if the executive commissioner has not adopted applicable rules.

C.S.S.B. 221 amends the Human Resources Code to require DFPS to send the survey soliciting information regarding DFPS's performance with respect to providing investigative and adult protective services to the required stakeholders, agencies, and courts biennially, rather than annually. The bill increases the penalty for knowingly or intentionally reporting information relating to a report of abuse, neglect, or exploitation of an elderly or disabled person that the person knows is false or lacks factual foundation from a Class B misdemeanor to a Class A misdemeanor. The bill requires DFPS to continue an investigation of a report of abuse, neglect, or exploitation of an elderly or disabled person who refuses to be interviewed or cannot be interviewed because of a physical or mental impairment by interviewing other persons thought to have knowledge relevant to the investigation.

C.S.S.B. 221 specifies, in provisions of law including a determination that a report does not concern abuse, neglect, or exploitation as a condition under which DADS is not required to initiate a prompt and thorough investigation as needed to evaluate the accuracy of a report of an allegation of abuse, neglect, or exploitation, that the determination be that the report does not concern abuse, neglect, or exploitation, as those terms are defined by executive commissioner rule and requires the statutory definitions of those terms to be used if the executive commissioner has not adopted applicable rules.

C.S.S.B. 221 includes financial records in the records or documents to which DFPS or another state agency is required to have access necessary to the performance of DFPS's or the agency's duties under provisions of law relating to investigations and protective services for elderly and disabled persons. The bill requires an institution that has a record or document that DFPS or a state agency needs to perform such duties to, without unnecessary delay, make the record or document available to DFPS or a state agency that requested the document. The bill includes a financial record from a person, agency, or institution in the records for which DFPS is exempt from paying a fee otherwise required or authorized by law to obtain the record if the record is requested in the course of an investigation. The bill requires a court to order an agency or institution that has a record or document requested by DFPS or a state agency to allow DFPS or the state agency to have access to that record or document and removes language requiring a court to make such an order of a person who has denied access to such a record. The bill entitles such an agency or institution to notice and a hearing on a petition filed for access to a record or document.

C.S.S.B. 221 exempts protective services authorized by an emergency order issued because an elderly or disabled person lacks the capacity to consent to protective services from the prohibition against DFPS providing protective services for an elderly or disabled person who withdraws from or refuses consent to voluntary protective services. The bill authorizes a protective services agency to furnish protective services 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.

C.S.S.B. 221 specifies that an emergency order authorizing protective services for an elderly or disabled person for which consent cannot be obtained 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, rather than expiring at the end of 72 hours from the time the order is rendered, and makes a conforming change. The bill specifies that a court may extend an emergency order after notice and a hearing and that the order may be extended for a period of not more than 30 days after the date the original emergency order for protective services was rendered. The bill authorizes the court, after notice and a hearing and for good cause shown, to grant a second extension of an emergency order of not more than an additional 30 days and prohibits the court from granting more than two extensions of the original emergency order.

C.S.S.B. 221 establishes that an emergency medical services provider who transports, in addition to a medical facility or physician who provides treatment to, an elderly or disabled person pursuant to certain specified emergency orders or authorizations is not liable for damages arising from the treatment or transportation, unless the damages arise from negligence of the facility, provider, or physician.

C.S.S.B. 221 authorizes DFPS to authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly or disabled person to safer surroundings if DFPS is unable to obtain an emergency order because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m. and authorizes DFPS to authorize, rather than order, other available services necessary to remove conditions creating the threat to life or physical safety of the elderly or disabled person. The bill requires DFPS, if DFPS's removal of a person from the person's place of residence 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.

C.S.S.B. 221 requires DFPS, in a provision of law establishing the requirements of DFPS if an employee requests a hearing related to the department's findings regarding employee misconduct during an investigation of a report of abuse, neglect, or exploitation of an elderly or disabled person, to designate an administrative law judge, rather than a hearings examiner, to conduct the hearing and requires the administrative law judge to promptly issue an order regarding the occurrence of the reportable conduct, rather requiring the hearings examiner to promptly issue to the commissioner of DFPS or the commissioner's designee a proposal for decision as to the occurrence of the reportable conduct.

C.S.S.B. 221 makes technical corrections in accordance with Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003. The bill makes nonsubstantive and conforming changes.

C.S.S.B. 221 repeals Section 48.405(c), Human Resources Code, relating to certain actions of the commissioner of DFPS or commissioner's designee based on the findings of fact, conclusions of law, and the recommendations of the hearings examiner in a hearing on the department's findings relating to employee misconduct in an investigation of a report of abuse, neglect, or exploitation of an elderly or disabled person.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 221 contains provisions not included in the original, in a provision of law establishing the conditions under which the Department of Family and Protective Services (DFPS) is required to obtain criminal history record information that relates to a person who is an alleged perpetrator in a report DFPS receives alleging that a person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, requiring the report of abuse, neglect, or exploitation to allege that the person engaged in conduct that meets the definition of abuse, neglect, or exploitation applicable through executive commissioner of the Health and Human Services Commission rule authorized by the bill, as an alternative to meeting the statutory definition of abuse, neglect, or exploitation under provisions of law relating to an investigation of a report of child abuse or neglect, and requiring the definitions provided under those provisions of law to be used if the executive commissioner has not adopted applicable rules.

C.S.H.B. 221 differs from the original by specifying, for purposes of provisions of law relating to reports of abuse, exploitation, and neglect relating to a home and community support services license, that "abuse," "exploitation," and "neglect" have the meanings applicable through executive commissioner rule and by requiring the statutory definitions of those terms under provisions of law relating to investigations and protective services for elderly and disabled persons to be used if the executive commissioner has not adopted applicable rules, whereas the original specifies that those terms have the meanings assigned as provided by a provision included in the original authorizing the executive commissioner to adopt rules defining those terms for use in an investigation of certain caretakers at an entity that holds a home and community support services license. The substitute differs from the original by authorizing the executive commissioner by rule to adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the existing definitions of those terms under provisions of law relating to investigation and protective services for elderly or disabled persons for purposes of conducting an investigation under those provisions, whereas the original authorizes the executive commissioner to adopt rules defining "abuse," "neglect," and "exploitation" for use in an investigation of certain caretakers at an entity that holds a home and community support services license.

C.S.S.B. 221 contains a provision not included in the original specifying, in provisions of law including a determination that a report does not concern abuse, neglect, or exploitation as a condition under which the Department of Aging and Disability Services is not required to initiate a prompt and thorough investigation to evaluate the accuracy of a report of an allegation of abuse, neglect, or exploitation, that the determination be that the report does not concern abuse, neglect, or exploitation, as those terms are defined by executive commissioner rule, and requiring the statutory definitions of those terms to be used if the executive commissioner has not adopted applicable rules.

C.S.S.B. 221 contains provisions not included in the original requiring DFPS, in a provision of law establishing the requirements of DFPS if an employee requests a hearing related to the department's findings regarding employee misconduct during an investigation of a report of abuse, neglect, or exploitation of an elderly or disabled person, to designate an administrative law judge to conduct the hearing and requiring the administrative law judge to promptly issue an order regarding the occurrence of the reportable conduct.

C.S.S.B. 221 contains a provision not included in the original repealing a section of the Human Resources Code. The substitute contains a transition provision not included in the original.