

By: Zerwas

H.B. No. 1194

A BILL TO BE ENTITLED

AN ACT

relating to investigations and other procedures with respect to allegations of child abuse and neglect.

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

SECTION 1. Section 261.002, Family Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) The department may adopt rules necessary to carry out this section. The rules shall provide for procedural protections for individuals reported to have committed abuse or neglect, cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

(d) Before the department may add a record of a case of child abuse or neglect to the central registry, the department must provide to the individual reported to have committed the abuse or neglect:

(1) written notice that information regarding the report will be added to the registry;

(2) a copy of the record that will be added to the registry; and

(3) the opportunity to appeal the department's finding of abuse or neglect as provided by Subsection (e).

(e) An individual described by Subsection (d) may appeal the

1 department's finding of abuse or neglect by requesting a hearing
2 conducted by the State Office of Administrative Hearings. An
3 appeal under this subsection is a contested case under Chapter
4 2001, Government Code. The department may not include in the
5 central registry a record of a report of child abuse or neglect if
6 the department's finding of abuse or neglect is not sustained by an
7 administrative law judge following a hearing under this section.

8 SECTION 2. Section 261.103, Family Code, is amended by
9 adding Subsection (d) to read as follows:

10 (d) The department or other entity receiving a report of
11 abuse or neglect shall maintain each report until the second
12 anniversary of the date the department or other entity receives the
13 report.

14 SECTION 3. Sections 261.201(b) and (c), Family Code, are
15 amended to read as follows:

16 (b) A court shall ~~may~~ order the disclosure of information
17 that is confidential under this section if:

18 (1) a motion has been filed with the court requesting
19 the release of the information;

20 (2) a notice of hearing has been served on the
21 investigating agency and all other interested parties; and

22 (3) after hearing and an in camera review of the
23 requested information, the court determines that the disclosure of
24 the requested information is ~~+~~

25 ~~[(A) essential to the administration of justice,~~
26 ~~and~~

27 ~~[(B)]~~ not likely to endanger the life or safety

1 of:

2 (A) [~~(i)~~] a child who is the subject of the
3 report of alleged or suspected abuse or neglect;

4 (B) [~~(ii)~~] a person who makes a report of
5 alleged or suspected abuse or neglect; or

6 (C) [~~(iii)~~] any other person who participates
7 in an investigation of reported abuse or neglect or who provides
8 care for the child.

9 (c) In addition to Subsection (b), a court, on its own
10 motion, may order disclosure of information that is confidential
11 under this section if:

12 (1) the order is rendered at a hearing for which all
13 parties have been given notice;

14 (2) the court finds that disclosure of the information
15 is~~+~~

16 [~~(A) essential to the administration of justice;~~

17 ~~and~~

18 [~~(B)~~] not likely to endanger the life or safety

19 of:

20 (A) [~~(i)~~] a child who is the subject of the
21 report of alleged or suspected abuse or neglect;

22 (B) [~~(ii)~~] a person who makes a report of
23 alleged or suspected abuse or neglect; or

24 (C) [~~(iii)~~] any other person who participates
25 in an investigation of reported abuse or neglect or who provides
26 care for the child; and

27 (3) the order is reduced to writing or made on the

1 record in open court.

2 SECTION 4. Section 261.302, Family Code, is amended by
3 amending Subsections (a) and (f) and adding Subsections (e-1),
4 (e-2), and (e-3) to read as follows:

5 (a) The investigation may include:

6 (1) a visit to the child's home, unless the alleged
7 abuse or neglect can be confirmed or clearly ruled out without a
8 home visit; and

9 (2) an interview with and examination of the subject
10 child, any other child in the home, or the child's parents, which
11 may include a medical, psychological, or psychiatric examination as
12 authorized by Subsection (e-1).

13 (e-1) Except as provided by Subsection (e-2), an
14 investigation that includes an examination of the subject child or
15 any other child in the household may not include a medical,
16 psychological, or psychiatric examination of the child unless:

17 (1) the child's parent, conservator, or legal guardian
18 consents in writing to the examination; or

19 (2) the department obtains a court order for the
20 medical, psychological, or psychiatric examination.

21 (e-2) If during the investigation a department investigator
22 believes that a child needs emergency medical attention before a
23 representative of a law enforcement agency is able to arrive, the
24 investigator may obtain medical assistance for the child from
25 emergency medical services personnel, as defined by Section
26 773.003, Health and Safety Code.

27 (e-3) This section does not limit the authority of a law

1 enforcement agency to perform its duties under any other law.

2 (f) A person commits an offense if the person is notified of
3 the time of the transport of a child by the department and the
4 location from which the transport is initiated and the person is
5 present at the location when the transport is initiated and
6 attempts to interfere with the department's investigation. An
7 offense under this subsection is a Class B misdemeanor. It is an
8 exception to the application of this subsection that the department
9 requested the person to be present at the site of the transport.
10 This subsection applies only when the department has taken custody
11 of a child under Section 262.104, an ongoing court-ordered
12 investigation is being conducted, or the child's parent,
13 conservator, or legal guardian has consented to the transport.

14 SECTION 5. Section 261.3021, Family Code, is amended to
15 read as follows:

16 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT. (a)
17 Subject to the appropriation of money for these purposes, the
18 department shall:

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

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

26 (3) provide department supervisors with access to
27 casework quality indicators and train department supervisors on the

1 use of that information in the daily supervision of caseworkers;

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

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

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

10 (b) The department shall record and maintain all interviews
11 and documents pertaining to an investigation, including original
12 notes.

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

15 (a) As soon as possible after initiating an investigation of
16 a parent or other person having legal custody of a child, the
17 department shall provide to the person:

18 (1) a summary that:

19 (A) is brief and easily understood;

20 (B) is written in a language that the person
21 understands, or if the person is illiterate, is read to the person
22 in a language that the person understands; and

23 (C) contains the following information:

24 (i) the department's procedures for
25 conducting an investigation of alleged child abuse or neglect,
26 including:

27 (a) a description of the

1 circumstances under which the department would request to remove
2 the child from the home through the judicial system; and

3 (b) an explanation that the law
4 requires the department to refer all reports of alleged child abuse
5 or neglect to a law enforcement agency for a separate determination
6 of whether a criminal violation occurred;

7 (ii) the person's right to file a complaint
8 with the department or to request a review of the findings made by
9 the department in the investigation;

10 (iii) the person's right to review all
11 records of the investigation unless the review would jeopardize an
12 ongoing criminal investigation or the child's safety;

13 (iv) the person's right to seek legal
14 counsel;

15 (v) references to the statutory and
16 regulatory provisions governing child abuse and neglect and how the
17 person may obtain copies of those provisions; ~~and~~

18 (vi) the process the person may use to
19 acquire access to the child if the child is removed from the home;
20 and

21 (vii) a list of the specific allegations on
22 which the investigation is based, including the date and a detailed
23 description of each allegation that the department is
24 investigating;

25 (2) if the department determines that removal of the
26 child may be warranted, a proposed child placement resources form
27 that:

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

3 (i) complete and return the form to the
4 department or agency; and

5 (ii) identify in the form three individuals
6 who reside in the state within 100 miles from the child's primary
7 residence who could serve as [be] relative caregivers or designated
8 caregivers, as those terms are defined by Section 264.751, before a
9 suit affecting the parent-child relationship is filed and until the
10 suit is dismissed; and

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

15 (3) an informational manual required by Section
16 261.3071.

17 SECTION 7. Section 261.309, Family Code, is amended by
18 adding Subsections (b-1), (c-1), (c-2), and (e-1) and amending
19 Subsections (c) and (d) to read as follows:

20 (b-1) The immediate supervisor shall submit a written
21 report at the conclusion of the informal review under Subsection
22 (b). The report must summarize the person's case or complaint and
23 contain the supervisor's findings relating to the person's case or
24 complaint. Not later than the 20th day after the date the
25 supervisor submits the report, the department shall make the
26 written report available to the person under investigation.

27 (c) If, after the department's investigation, the person

1 who is alleged to have abused or neglected a child disputes the
2 department's determination of whether child abuse or neglect
3 occurred, the person may request an administrative review of the
4 findings. The department shall provide a copy of the file relating
5 to the person who requests the review to the person not later than
6 the 30th day before the date of the review. A department employee
7 in administration who was not involved in or did not directly
8 supervise the investigation shall conduct the review. The review
9 must sustain, alter, or reverse the department's original findings
10 in the investigation.

11 (c-1) At the administrative review under Subsection (c),
12 the person conducting the review for the department shall allow the
13 person challenging the findings to bring witnesses, submit
14 evidence, and question the investigative workers and immediate
15 supervisors who developed the department's findings. The
16 department may postpone the administrative review for not more than
17 30 days to ensure attendance of necessary investigative workers and
18 immediate supervisors.

19 (c-2) The department shall make an audio recording of the
20 administrative review and preserve the recording until the first
21 anniversary of the date the administrative review concludes. The
22 department shall make the audio recording available to any party
23 involved in the review not later than the 10th day after the date
24 the person requests access to the recording.

25 (d) Unless a civil or criminal court proceeding or an
26 ongoing criminal investigation relating to the alleged abuse or
27 neglect investigated by the department is pending, the department

1 employee shall conduct the review prescribed by Subsection (c) as
2 soon as possible but not later than the 45th day after the date the
3 department receives the request. If a civil court proceeding
4 initiated by the department, a [or] criminal court proceeding, or
5 an ongoing criminal investigation is pending, the department may
6 postpone the review until the court proceeding is completed. The
7 department shall conduct the review not later than the 45th day
8 after the date the court proceeding or investigation is completed.

9 (e-1) A person under investigation for allegedly abusing or
10 neglecting the person's child is not subject to, and cannot be
11 required to submit to, the jurisdiction of the State Office of
12 Administrative Hearings in any proceeding in connection to the
13 alleged abuse or neglect.

14 SECTION 8. Section 261.310(d), Family Code, is amended to
15 read as follows:

16 (d) The standards shall:

17 (1) recommend that videotaped and audiotaped
18 interviews be uninterrupted;

19 (2) recommend a maximum number of interviews with and
20 examinations of a suspected victim;

21 (3) provide procedures to preserve evidence,
22 including the original audio recordings of the intake telephone
23 calls, original notes, e-mails, videotapes, and other audiotapes,
24 until the second anniversary of the later of the date the evidence
25 is created or the date of a final judgment in a case for which the
26 evidence is created [~~for one year~~]; and

27 (4) provide that an investigator of suspected child

1 abuse or neglect make a reasonable effort to locate and inform each
2 parent of a child of any report of abuse or neglect relating to the
3 child.

4 SECTION 9. Section 261.302(c), Family Code, is repealed.

5 SECTION 10. The changes in law made by this Act apply only
6 to an investigation of a report of child abuse or neglect that is
7 made, or a suit affecting the parent-child relationship that is
8 commenced, on or after the effective date of this Act. A report
9 that is made or a suit that is commenced before the effective date
10 of this Act is governed by the law in effect on the date the report
11 was made or the suit was commenced, and the former law is continued
12 in effect for that purpose.

13 SECTION 11. This Act takes effect September 1, 2011.