

By: Zerwas

H.B. No. 1323

A BILL TO BE ENTITLED

AN ACT

relating to investigations of and procedures for reports 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:

(1) procedural protections for individuals reported to have committed abuse or neglect;

(2) cooperation with local child service agencies, including hospitals, clinics, and schools;~~[7]~~ and

(3) cooperation with other states in exchanging reports to effect a national registration system.

(d) Before the department may add a record of a reported 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 reported case 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

1 of abuse or neglect as provided by Subsection (e).

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

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

13 (d) The department or other entity shall maintain each  
14 report until the second anniversary of the date the department or  
15 other entity receives the report.

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

18 (b) A court shall [~~may~~] order the disclosure of information  
19 that is confidential under this section if:

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

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

24 (3) after hearing and an in camera review of the  
25 requested information, the court determines that the disclosure of  
26 the requested information is[+]

27 [~~(A) essential to the administration of justice,~~

1 ~~and~~

2                   ~~[(B)]~~ not likely to endanger the life or safety  
3 of:

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

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

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

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

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

16                   (2) the court finds that disclosure of the information  
17 is~~+~~

18                                   ~~[(A) essential to the administration of justice,~~

19 ~~and~~

20                   ~~[(B)]~~ not likely to endanger the life or safety  
21 of:

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

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

26                   (C) ~~[(iii)]~~ any other person who participates  
27 in an investigation of reported abuse or neglect or who provides

1 care for the child; and

2 (3) the order is reduced to writing or made on the  
3 record in open court.

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

7 (a) The investigation may include:

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

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

15 (e-1) Except as provided by Subsection (e-2), an  
16 investigation that includes an examination of the subject child or  
17 another child in the home may not include a medical, psychological,  
18 or psychiatric examination of the child unless:

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

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

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

1 773.003, Health and Safety Code.

2 (e-3) This section does not limit the authority of a law  
3 enforcement agency to perform its duties under any other law.

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

13 (1) the department has taken possession of a child  
14 under Section 262.104 or is conducting an ongoing court-ordered  
15 investigation; or

16 (2) the child's parent, conservator, or legal guardian  
17 has consented to the transport.

18 SECTION 5. Section 261.3021, Family Code, is amended to  
19 read as follows:

20 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT. (a)  
21 Subject to the appropriation of money for these purposes, the  
22 department shall:

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

27 (2) identify and develop a comprehensive set of

1 casework quality indicators that must be reported in real time to  
2 support timely management oversight;

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

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

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

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

14 (b) The department shall make a record of each interview  
15 conducted in an investigation of a report of abuse or neglect and  
16 shall maintain those records and all other documents, including  
17 original notes, relating to the investigation.

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

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

23 (1) a summary that:

24 (A) is brief and easily understood;

25 (B) is written in a language that the person  
26 understands, or if the person is illiterate, is read to the person  
27 in a language that the person understands; and

1 (C) contains the following information:

2 (i) the department's procedures for  
3 conducting an investigation of alleged child abuse or neglect,  
4 including:

5 (a) a description of the  
6 circumstances under which the department would request to remove  
7 the child from the home through the judicial system; and

8 (b) an explanation that the law  
9 requires the department to refer all reports of alleged child abuse  
10 or neglect to a law enforcement agency for a separate determination  
11 of whether a criminal violation occurred;

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

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

18 (iv) the person's right to seek legal  
19 counsel;

20 (v) references to the statutory and  
21 regulatory provisions governing child abuse and neglect and how the  
22 person may obtain copies of those provisions; ~~and~~

23 (vi) the process the person may use to  
24 acquire access to the child if the child is removed from the home;  
25 and

26 (vii) a list of the specific allegations  
27 being investigated, including the date and a detailed description

1 of each allegation;

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

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

7 (i) complete and return the form to the  
8 department or agency; and

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

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

19 (3) an informational manual required by Section  
20 261.3071.

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

24 (b-1) At the conclusion of the informal review under  
25 Subsection (b), the immediate supervisor shall submit a summary of  
26 the person's case or complaint and the supervisor's findings  
27 relating to the person's case or complaint. Not later than the 20th



1 day after the date the supervisor submits the summary and findings,  
2 the department shall make the written summary and findings  
3 available to the person under investigation.

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

15 (c-1) At the administrative review under Subsection (c),  
16 the person conducting the review for the department shall allow the  
17 person challenging the findings to bring witnesses, submit  
18 evidence, and question the investigative workers and immediate  
19 supervisors who developed the department's findings. The  
20 department may postpone the administrative review for not more than  
21 30 days to ensure attendance of necessary investigative workers and  
22 immediate supervisors.

23 (c-2) The department shall make an audio recording of the  
24 administrative review and preserve the recording until the first  
25 anniversary of the date the administrative review concludes. The  
26 department shall make the audio recording available to any party  
27 involved in the review not later than the 10th day after the date

1 the person requests access to the recording.

2 (d) Unless a civil or criminal court proceeding or an  
3 ongoing criminal investigation relating to the alleged abuse or  
4 neglect investigated by the department is pending, the department  
5 employee shall conduct the review prescribed by Subsection (c) as  
6 soon as possible but not later than the 45th day after the date the  
7 department receives the request. If a civil court proceeding  
8 initiated by the department, a [~~or~~] criminal court proceeding, or  
9 an ongoing criminal investigation is pending, the department may  
10 postpone the review until the court proceeding is completed. The  
11 department shall conduct the review not later than the 45th day  
12 after the date the court proceeding or investigation is completed.

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

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

20 (d) The standards shall:

21 (1) recommend that videotaped and audiotaped  
22 interviews be uninterrupted;

23 (2) recommend a maximum number of interviews with and  
24 examinations of a suspected victim;

25 (3) provide procedures to preserve evidence,  
26 including the original audio recordings of the intake telephone  
27 calls, original notes, e-mails, videotapes, and other recordings or

1 audiotapes, until the second anniversary of the later of the date  
2 the evidence is created or the date of a final judgment in a  
3 reported case for which the evidence is created [~~for one year~~]; and

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

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

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

17 SECTION 11. This Act takes effect September 1, 2013.