

By: Hughes, King of Taylor

H.B. No. 4119

Substitute the following for H.B. No. 4119:

By: Raymond

C.S.H.B. No. 4119

A BILL TO BE ENTITLED

1 AN ACT

2 relating to investigations of and procedures for reports of child
3 abuse and neglect.

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

5 SECTION 1. Section 261.002(b), Family Code, as amended by
6 S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015,
7 is amended to read as follows:

8 (b) The executive commissioner may adopt rules necessary to
9 carry out this section. The rules shall provide for:

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

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

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

16 SECTION 2. Section 261.002, Family Code, is amended by
17 adding Subsections (d) and (e) to read as follows:

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

22 (1) written notice that information regarding the
23 reported case will be added to the registry;

24 (2) a copy of the record that will be added to the

1 registry; and

2 (3) the opportunity to appeal the department's finding
3 of abuse or neglect through the department's administrative
4 remedies and as provided by Subsection (e).

5 (e) An individual described by Subsection (d) may appeal the
6 department's finding of abuse or neglect to a district court in the
7 county in which the individual resides. The district court may
8 sustain the department's finding of abuse or neglect only on the
9 court's finding by clear and convincing evidence that the
10 individual committed the abuse or neglect. The individual is
11 entitled to a jury trial. The department may not include in the
12 central registry a record of a reported case of child abuse or
13 neglect if the department's finding of abuse or neglect is not
14 sustained by the district court's finding of abuse or neglect.

15 SECTION 3. Section 261.103, Family Code, is amended by
16 adding Subsection (d) to read as follows:

17 (d) The department or other entity shall maintain each
18 report until the second anniversary of the date the department or
19 other entity receives the report.

20 SECTION 4. Sections 261.201(b) and (c), Family Code, are
21 amended to read as follows:

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

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

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

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

4 ~~[(A) essential to the administration of justice,~~
5 ~~and~~

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

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

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

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

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

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

20 (2) the court finds that disclosure of the information
21 is[+]

22 ~~[(A) essential to the administration of justice,~~
23 ~~and~~

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

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

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

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

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

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

11 (a) The investigation may include:

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

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

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

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

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

27 (e-2) If during the investigation a department investigator

1 believes that a child needs emergency medical attention before a
2 representative of a law enforcement agency is able to arrive, the
3 investigator may obtain medical assistance for the child from
4 emergency medical services personnel, as defined by Section
5 773.003, Health and Safety Code.

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

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

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

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

22 SECTION 6. Section 261.3021, Family Code, is amended to
23 read as follows:

24 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT. (a)
25 Subject to the appropriation of money for these purposes, the
26 department shall:

27 (1) identify critical investigation actions that

1 impact child safety and require department caseworkers to document
2 those actions in a child's case file not later than the day after
3 the action occurs;

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

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

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

13 (5) use current data reporting systems to provide
14 department supervisors and management with easier access to
15 information; and

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

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

22 SECTION 7. Section 261.307(a), Family Code, is amended to
23 read as follows:

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

27 (1) a summary that:

1 (A) is brief and easily understood;

2 (B) is written in a language that the person
3 understands, or if the person is illiterate, is read to the person
4 in a language that the person understands; and

5 (C) contains the following information:

6 (i) the department's procedures for
7 conducting an investigation of alleged child abuse or neglect,
8 including:

9 (a) a description of the
10 circumstances under which the department would request to remove
11 the child from the home through the judicial system; and

12 (b) an explanation that the law
13 requires the department to refer all reports of alleged child abuse
14 or neglect to a law enforcement agency for a separate determination
15 of whether a criminal violation occurred;

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

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

22 (iv) the person's right to seek legal
23 counsel;

24 (v) references to the statutory and
25 regulatory provisions governing child abuse and neglect and how the
26 person may obtain copies of those provisions; ~~and~~

27 (vi) the process the person may use to

1 acquire access to the child if the child is removed from the home;
2 and

3 (vii) a list of the specific allegations
4 being investigated, including the date and a detailed description
5 of each allegation;

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

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

11 (i) complete and return the form to the
12 department or agency; and

13 (ii) identify in the form three individuals
14 who reside in this state within 100 miles of the child's primary
15 residence and who could serve as ~~be~~ relative caregivers or
16 designated caregivers, as those terms are defined by Section
17 264.751, before a suit affecting the parent-child relationship is
18 filed and until the suit is dismissed; 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 SECTION 8. Section 261.309, Family Code, is amended by
26 adding Subsections (b-1), (c-1), (c-2), and (e-1) and amending
27 Subsections (c) and (d) to read as follows:

1 (b-1) At the conclusion of the informal review under
2 Subsection (b), the immediate supervisor shall submit a summary of
3 the person's case or complaint and the supervisor's findings
4 relating to the person's case or complaint. Not later than the 20th
5 day after the date the supervisor submits the summary and findings,
6 the department shall make the written summary and findings
7 available to the person under investigation.

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

19 (c-1) At the administrative review prescribed by Subsection
20 (c), the person conducting the review for the department shall
21 allow the person challenging the findings to bring witnesses,
22 submit evidence, and question the investigative workers and
23 immediate supervisors who developed the department's findings. The
24 department may postpone the administrative review for not more than
25 30 days to ensure attendance of witnesses, necessary investigative
26 workers, and immediate supervisors.

27 (c-2) The department shall make an audio recording of the

1 administrative review prescribed by Subsection (c) and preserve the
2 recording until the first anniversary of the date the
3 administrative review concludes. The department shall make the
4 audio recording available to any party involved in the review not
5 later than the 10th day after the date the person requests access to
6 the recording.

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

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

24 SECTION 9. Section 261.310(d), Family Code, is amended to
25 read as follows:

26 (d) The standards shall:

27 (1) recommend that videotaped and audiotaped

1 interviews be uninterrupted;

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

4 (3) provide procedures to preserve evidence,
5 including the original audio recordings of the intake telephone
6 calls, original notes, e-mails, videotapes, and other recordings or
7 audiotapes, until the second anniversary of the later of the date
8 the evidence is created or the date of a final judgment in a
9 reported case for which the evidence is created [~~for one year~~]; and

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

14 SECTION 10. Section 261.302(c), Family Code, is repealed.

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

23 SECTION 12. This Act takes effect September 1, 2015.