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H.B. No. 249

A BILL TO BE ENTITLED

1 AN ACT
2 relating to investigations of abuse, neglect, or exploitation
3 conducted by the Department of Family and Protective Services.

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

5 SECTION 1. Section 261.001, Family Code, is amended by
6 adding Subdivision (3) and amending Subdivision (5) to read as
7 follows:

8 (3) "Exploitation" means the illegal or improper use
9 of a child or of the resources of a child for monetary or personal
10 benefit, profit, or gain by an employee, volunteer, or other
11 individual working under the auspices of a facility or program as
12 further described by rule or policy.

13 (5) "Person responsible for a child's care, custody,
14 or welfare" means a person who traditionally is responsible for a
15 child's care, custody, or welfare, including:

16 (A) a parent, guardian, managing or possessory
17 conservator, or foster parent of the child;

18 (B) a member of the child's family or household
19 as defined by Chapter 71;

20 (C) a person with whom the child's parent
21 cohabits;

22 (D) school personnel or a volunteer at the
23 child's school; ~~or~~

24 (E) personnel or a volunteer at a public or

1 private child-care facility that provides services for the child or
2 at a public or private residential institution or facility where
3 the child resides; or

4 (F) an employee, volunteer, or other person
5 working under the supervision of a licensed or unlicensed
6 child-care facility, including a family home, residential
7 child-care facility, employer-based day-care facility, or shelter
8 day-care facility, as those terms are defined in Chapter 42, Human
9 Resources Code.

10 SECTION 2. Section 261.101(b), Family Code, is amended to
11 read as follows:

12 (b) If a professional has cause to believe that a child has
13 been abused or neglected or may be abused or neglected, or that a
14 child is a victim of an offense under Section 21.11, Penal Code, and
15 the professional has cause to believe that the child has been abused
16 as defined by Section 261.001 [~~or 261.401~~], the professional shall
17 make a report not later than the 48th hour after the hour the
18 professional first suspects that the child has been or may be abused
19 or neglected or is a victim of an offense under Section 21.11, Penal
20 Code. A professional may not delegate to or rely on another person
21 to make the report. In this subsection, "professional" means an
22 individual who is licensed or certified by the state or who is an
23 employee of a facility licensed, certified, or operated by the
24 state and who, in the normal course of official duties or duties for
25 which a license or certification is required, has direct contact
26 with children. The term includes teachers, nurses, doctors,
27 day-care employees, employees of a clinic or health care facility

1 that provides reproductive services, juvenile probation officers,
2 and juvenile detention or correctional officers.

3 SECTION 3. Section 261.301, Family Code, is amended by
4 amending Subsections (b), (c), and (h) and adding Subsection (b-1)
5 to read as follows:

6 (b) Except as provided by Subsection (b-1), a [A] state
7 agency shall investigate a report that alleges abuse, ~~[or]~~ neglect,
8 or exploitation occurred in a facility operated, licensed,
9 certified, or registered by that agency as provided by Subchapter
10 E. In conducting an investigation for a facility operated,
11 licensed, certified, registered, or listed by the department, the
12 department shall perform the investigation as provided by:

- 13 (1) Subchapter E; and
14 (2) the Human Resources Code.

15 (b-1) The department shall investigate a report that
16 alleges abuse, neglect, or exploitation occurred in a facility
17 operated, licensed, certified, or registered by the Health and
18 Human Services Commission, the department, or another health and
19 human services agency listed in Section 531.001, Government Code.
20 The department shall perform the investigation as provided by:

- 21 (1) Subchapter E; and
22 (2) the Human Resources Code.

23 (c) The department is not required to investigate a report
24 that alleges child abuse, ~~[or]~~ neglect, or exploitation by a person
25 except as provided by Subsections (a) and (b) [~~other than a person~~
26 ~~responsible for a child's care, custody, or welfare~~]. The
27 appropriate state or local law enforcement agency shall investigate

1 other reports of child abuse, neglect, or exploitation [~~that~~
2 ~~report~~] if the agency determines an investigation should be
3 conducted.

4 (h) The department and the appropriate local law
5 enforcement agency shall conduct an investigation[~~, other than an~~
6 ~~investigation under Subchapter E,~~] as provided by this section and
7 Article 2.27, Code of Criminal Procedure, if the investigation is
8 of a report that alleges that a child has been or may be the victim
9 of conduct that constitutes a criminal offense that poses an
10 immediate risk of physical or sexual abuse of a child that could
11 result in the death of or serious harm to the child. Immediately on
12 receipt of a report described by this subsection, the department
13 shall notify the appropriate local law enforcement agency of the
14 report.

15 SECTION 4. Section 261.401(b), Family Code, is amended to
16 read as follows:

17 (b) Except as provided by Sections 261.301 and [~~Section~~
18 261.404, a state agency that operates, licenses, certifies,
19 registers, or lists a facility in which children are located or
20 provides oversight of a program that serves children shall make a
21 prompt, thorough investigation of a report that a child has been or
22 may be abused, neglected, or exploited in the facility or program.
23 The primary purpose of the investigation shall be the protection of
24 the child.

25 SECTION 5. Sections 261.405(a) and (c), Family Code, are
26 amended to read as follows:

27 (a) Notwithstanding Section 261.001, in [~~In~~] this section:

1 (1) "Abuse" means an intentional, knowing, or reckless
2 act or omission by an employee, volunteer, or other individual
3 working under the auspices of a facility or program that causes or
4 may cause emotional harm or physical injury to, or the death of, a
5 child served by the facility or program as further described by rule
6 or policy.

7 (2) "Exploitation" means the illegal or improper use
8 of a child or of the resources of a child for monetary or personal
9 benefit, profit, or gain by an employee, volunteer, or other
10 individual working under the auspices of a facility or program as
11 further described by rule or policy.

12 (3) "Juvenile justice facility" means a facility
13 operated wholly or partly by the juvenile board, by another
14 governmental unit, or by a private vendor under a contract with the
15 juvenile board, county, or other governmental unit that serves
16 juveniles under juvenile court jurisdiction. The term includes:

17 (A) a public or private juvenile
18 pre-adjudication secure detention facility, including a holdover
19 facility;

20 (B) a public or private juvenile
21 post-adjudication secure correctional facility except for a
22 facility operated solely for children committed to the Texas
23 Juvenile Justice Department; and

24 (C) a public or private non-secure juvenile
25 post-adjudication residential treatment facility that is not
26 licensed by the Department of Family and Protective Services or the
27 Department of State Health Services.

1 (4) [~~2~~] "Juvenile justice program" means a program
2 or department operated wholly or partly by the juvenile board or by
3 a private vendor under a contract with a juvenile board that serves
4 juveniles under juvenile court jurisdiction. The term includes:

5 (A) a juvenile justice alternative education
6 program;

7 (B) a non-residential program that serves
8 juvenile offenders under the jurisdiction of the juvenile court;
9 and

10 (C) a juvenile probation department.

11 (5) "Neglect" means a negligent act or omission by an
12 employee, volunteer, or other individual working under the auspices
13 of a facility or program, including failure to comply with an
14 individual treatment plan, plan of care, or individualized service
15 plan, that causes or may cause substantial emotional harm or
16 physical injury to, or the death of, a child served by the facility
17 or program as further described by rule or policy.

18 (c) The Texas Juvenile Justice Department shall make a
19 prompt, thorough [~~conduct an~~] investigation as provided by this
20 chapter if that department receives a report of alleged abuse,
21 neglect, or exploitation in any juvenile justice program or
22 facility. The primary purpose of the investigation shall be the
23 protection of the child.

24 SECTION 6. Section 531.02013, Government Code, is amended
25 to read as follows:

26 Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN
27 AGENCIES. The following functions are not subject to transfer

1 under Sections 531.0201 and 531.02011:

2 (1) the functions of the Department of Family and
3 Protective Services, including the statewide intake of reports and
4 other information, related to the following:

5 (A) child protective services, including
6 services that are required by federal law to be provided by this
7 state's child welfare agency;

8 (B) adult protective services, other than
9 investigations of the alleged abuse, neglect, or exploitation of an
10 elderly person or person with a disability:

11 (i) in a facility operated, or in a facility
12 or by a person licensed, certified, or registered, by a state
13 agency; or

14 (ii) by a provider that has contracted to
15 provide home and community-based services; ~~and~~

16 (C) prevention and early intervention services;

17 and

18 (D) investigations of alleged abuse, neglect, or
19 exploitation occurring at a child-care facility, as that term is
20 defined in Section 40.042, Human Resources Code; and

21 (2) the public health functions of the Department of
22 State Health Services, including health care data collection and
23 maintenance of the Texas Health Care Information Collection
24 program.

25 SECTION 7. Subchapter B, Chapter 40, Human Resources Code,
26 is amended by adding Section 40.042 to read as follows:

27 Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND

1 EXPLOITATION. (a) In this section, "child-care facility" includes
2 a facility, licensed or unlicensed child-care facility, family
3 home, residential child-care facility, employer-based day-care
4 facility, or shelter day-care facility, as those terms are defined
5 in Chapter 42.

6 (b) For all investigations of child abuse, neglect, or
7 exploitation conducted by the child protective services division of
8 the department, the department shall adopt the definitions of
9 abuse, neglect, and exploitation provided in Section 261.001,
10 Family Code.

11 (c) The department shall establish standardized policies to
12 be used during investigations.

13 (d) The commissioner may establish units within the child
14 protective services division of the department to specialize in
15 investigating allegations of child abuse, neglect, or exploitation
16 occurring at a child-care facility.

17 (e) The department may require that investigators who
18 specialize in allegations of child abuse, neglect, and exploitation
19 occurring at child-care facilities receive ongoing training on the
20 minimum licensing standards for any facilities that are applicable
21 to the investigator's specialization.

22 (f) After an investigation of abuse, neglect, or
23 exploitation occurring at a child-care facility, the department
24 shall provide the state agency responsible for regulating the
25 facility with access to any information relating to the
26 department's investigation. Providing access to confidential
27 information under this subsection does not constitute a waiver of

1 confidentiality.

2 (g) The executive commissioner may adopt rules to implement
3 this section.

4 SECTION 8. Section 42.002(23), Human Resources Code, is
5 amended to read as follows:

6 (23) "Other maltreatment" means:

7 (A) abuse, as defined by Section 261.001 [~~or~~
8 261.401], Family Code; or

9 (B) neglect, as defined by Section 261.001 [~~or~~
10 261.401], Family Code.

11 SECTION 9. Section 42.044(c-1), Human Resources Code, is
12 amended to read as follows:

13 (c-1) The department:

14 (1) shall investigate a listed family home if the
15 department receives a complaint that:

16 (A) a child in the home has been abused or
17 neglected, as defined by Section 261.001 [~~261.401~~], Family Code; or

18 (B) otherwise alleges an immediate risk of danger
19 to the health or safety of a child being cared for in the home; and

20 (2) may investigate a listed family home to ensure
21 that the home is providing care for compensation to not more than
22 three children, excluding children who are related to the
23 caretaker.

24 SECTION 10. Section 261.401(a), Family Code, is repealed.

25 SECTION 11. (a) The changes in law made by this Act apply
26 only to a report of suspected abuse, neglect, or exploitation of a
27 child that is made on or after the effective date of this Act. A

1 report of suspected abuse, neglect, or exploitation that is made
2 before that date is governed by the law in effect on the date the
3 report was made, and that law is continued in effect for that
4 purpose.

5 (b) Notwithstanding any provision of Subchapter A-1,
6 Chapter 531, Government Code, or any other law, the responsibility
7 for conducting investigations of reports of abuse, neglect, or
8 exploitation occurring at a child-care facility, as that term is
9 defined in Section 40.042, Human Resources Code, as added by this
10 Act, may not be transferred to the Health and Human Services
11 Commission and remains the responsibility of the Department of
12 Family and Protective Services.

13 (c) As soon as possible after the effective date of this
14 Act, the commissioner of the Department of Family and Protective
15 Services shall transfer the responsibility for conducting
16 investigations of reports of abuse, neglect, or exploitation
17 occurring at a child-care facility, as that term is defined in
18 Section 40.042, Human Resources Code, as added by this Act, to the
19 child protective services division of the department. The
20 commissioner shall transfer appropriate investigators and staff as
21 necessary to implement this subsection.

22 (d) The Department of Family and Protective Services shall
23 implement the standardized definitions and policies required under
24 Sections 40.042(b) and (c), Human Resources Code, as added by this
25 Act, not later than December 1, 2017.

26 SECTION 12. This Act takes effect September 1, 2017.