

By: Hernandez, Frank

H.B. No. 249

Substitute the following for H.B. No. 249:

By: Wu

C.S.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. Sections [261.301](#)(b), (c), (f), and (h), Family
4 Code, are amended to read as follows:

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

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

14 (c) The department is not required to investigate a report
15 that alleges child abuse, ~~[or]~~ neglect, or exploitation by a person
16 except as provided by Subsections (a) and (b) [~~other than a person~~
17 ~~responsible for a child's care, custody, or welfare~~]. The
18 appropriate state or local law enforcement agency shall investigate
19 other reports of child abuse, neglect, or exploitation [~~that~~
20 ~~report~~] if the agency determines an investigation should be
21 conducted.

22 (f) An investigation of a report to the department that
23 alleges that a child has been or may be the victim of conduct that
24 constitutes a criminal offense that poses an immediate risk of
25 physical or sexual abuse of a child that could result in the death
26 of or serious harm to the child shall be conducted jointly by a
27 peace officer, as defined by Article [2.12](#), Code of Criminal

1 Procedure, from the appropriate local law enforcement agency and
2 the department [~~or the agency responsible for conducting an~~
3 ~~investigation under Subchapter E~~].

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 531.02013, Government Code, is amended
16 to read as follows:

17 Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN
18 AGENCIES. The following functions are not subject to transfer
19 under Sections 531.0201 and 531.02011:

20 (1) the functions of the Department of Family and
21 Protective Services, including the statewide intake of reports and
22 other information, related to the following:

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

26 (B) adult protective services, other than
27 investigations of the alleged abuse, neglect, or exploitation of an

1 elderly person or person with a disability:

2 (i) in a facility operated, or in a facility
3 or by a person licensed, certified, or registered, by a state
4 agency; or

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

7 (C) prevention and early intervention services;
8 and

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

12 (2) the public health functions of the Department of
13 State Health Services, including health care data collection and
14 maintenance of the Texas Health Care Information Collection
15 program.

16 SECTION 5. Subchapter B, Chapter 40, Human Resources Code,
17 is amended by adding Section 40.042 to read as follows:

18 Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND
19 EXPLOITATION. (a) In this section, "child-care facility" includes
20 a facility, licensed or unlicensed child-care facility, family
21 home, residential child-care facility, employer-based day-care
22 facility, or shelter day-care facility, as those terms are defined
23 in Chapter 42.

24 (b) For all investigations of child abuse, neglect, or
25 exploitation conducted by the child protective services division of
26 the department, the department shall adopt the definitions of
27 abuse, neglect, and exploitation provided in Section 261.001,

1 Family Code.

2 (c) The department shall establish standardized policies to
3 be used during investigations.

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

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

13 (f) After an investigation of abuse, neglect, or
14 exploitation occurring at a child-care facility, the department
15 shall provide the state agency responsible for regulating the
16 facility with access to any information relating to the
17 department's investigation. Providing access to confidential
18 information under this subsection does not constitute a waiver of
19 confidentiality.

20 (g) The executive commissioner may adopt rules to implement
21 this section.

22 SECTION 6. Section 42.002(23), Human Resources Code, is
23 amended to read as follows:

24 (23) "Other maltreatment" means:

25 (A) abuse, as defined by Section 261.001 [~~or~~
26 261.401], Family Code; or

27 (B) neglect, as defined by Section 261.001 [~~or~~

1 ~~261.401~~], Family Code.

2 SECTION 7. Section 42.044(c-1), Human Resources Code, is
3 amended to read as follows:

4 (c-1) The department:

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

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

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

11 (2) may investigate a listed family home to ensure
12 that the home is providing care for compensation to not more than
13 three children, excluding children who are related to the
14 caretaker.

15 SECTION 8. Sections 261.401(a) and (b), Family Code, are
16 repealed.

17 SECTION 9. (a) The changes in law made by this Act apply
18 only to a report of suspected abuse, neglect, or exploitation of a
19 child that is made on or after the effective date of this Act. A
20 report of suspected abuse, neglect, or exploitation that is made
21 before that date is governed by the law in effect on the date the
22 report was made, and that law is continued in effect for that
23 purpose.

24 (b) Notwithstanding any provision of Subchapter A-1,
25 Chapter 531, Government Code, or any other law, the responsibility
26 for conducting investigations of reports of abuse, neglect, or
27 exploitation occurring at a child-care facility, as that term is

1 defined in Section 40.042, Human Resources Code, as added by this
2 Act, may not be transferred to the Health and Human Services
3 Commission and remains the responsibility of the Department of
4 Family and Protective Services.

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

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

18 SECTION 10. This Act takes effect September 1, 2017.