

SENATE AMENDMENTS

2nd Printing

By: Hernandez, Frank, Faircloth, Blanco

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.

ADOPTED

MAY 24 2017

Lacey Spaw
Secretary of the Senate

By: Hernandez

A.B. No. 249

Substitute the following for ___B. No. _____:

By: Van Taylor

C.S. H.B. No. 249

A BILL TO BE ENTITLED

1

AN ACT

2 relating to investigations of child abuse, neglect, or exploitation
3 and to child protective services functions of the Department of
4 Family and Protective Services.

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

6 SECTION 1. Section 71.004, Family Code, is amended to read
7 as follows:

8 Sec. 71.004. FAMILY VIOLENCE. "Family violence" means:

9 (1) an act by a member of a family or household against
10 another member of the family or household that is intended to result
11 in physical harm, bodily injury, assault, or sexual assault or that
12 is a threat that reasonably places the member in fear of imminent
13 physical harm, bodily injury, assault, or sexual assault, but does
14 not include defensive measures to protect oneself;

15 (2) abuse, as that term is defined by Sections
16 261.001(1)(C), (E), (G), (H), (I), (J), ~~and~~ (K), and (M), by a
17 member of a family or household toward a child of the family or
18 household; or

19 (3) dating violence, as that term is defined by
20 Section 71.0021.

21 SECTION 2. Section 261.001, Family Code, is amended by
22 amending Subdivisions (1), (4), and (5) and adding Subdivision (3)
23 to read as follows:

24 (1) "Abuse" includes the following acts or omissions

1 by a person:

2 (A) mental or emotional injury to a child that
3 results in an observable and material impairment in the child's
4 growth, development, or psychological functioning;

5 (B) causing or permitting the child to be in a
6 situation in which the child sustains a mental or emotional injury
7 that results in an observable and material impairment in the
8 child's growth, development, or psychological functioning;

9 (C) physical injury that results in substantial
10 harm to the child, or the genuine threat of substantial harm from
11 physical injury to the child, including an injury that is at
12 variance with the history or explanation given and excluding an
13 accident or reasonable discipline by a parent, guardian, or
14 managing or possessory conservator that does not expose the child
15 to a substantial risk of harm;

16 (D) failure to make a reasonable effort to
17 prevent an action by another person that results in physical injury
18 that results in substantial harm to the child;

19 (E) sexual conduct harmful to a child's mental,
20 emotional, or physical welfare, including conduct that constitutes
21 the offense of continuous sexual abuse of young child or children
22 under Section 21.02, Penal Code, indecency with a child under
23 Section 21.11, Penal Code, sexual assault under Section 22.011,
24 Penal Code, or aggravated sexual assault under Section 22.021,
25 Penal Code;

26 (F) failure to make a reasonable effort to
27 prevent sexual conduct harmful to a child;

1 (G) compelling or encouraging the child to engage
2 in sexual conduct as defined by Section 43.01, Penal Code,
3 including compelling or encouraging the child in a manner that
4 constitutes an offense of trafficking of persons under Section
5 20A.02(a)(7) or (8), Penal Code, prostitution under Section
6 43.02(b), Penal Code, or compelling prostitution under Section
7 43.05(a)(2), Penal Code;

8 (H) causing, permitting, encouraging, engaging
9 in, or allowing the photographing, filming, or depicting of the
10 child if the person knew or should have known that the resulting
11 photograph, film, or depiction of the child is obscene as defined by
12 Section 43.21, Penal Code, or pornographic;

13 (I) the current use by a person of a controlled
14 substance as defined by Chapter 481, Health and Safety Code, in a
15 manner or to the extent that the use results in physical, mental, or
16 emotional injury to a child;

17 (J) causing, expressly permitting, or
18 encouraging a child to use a controlled substance as defined by
19 Chapter 481, Health and Safety Code;

20 (K) causing, permitting, encouraging, engaging
21 in, or allowing a sexual performance by a child as defined by
22 Section 43.25, Penal Code; [~~or~~]

23 (L) knowingly causing, permitting, encouraging,
24 engaging in, or allowing a child to be trafficked in a manner
25 punishable as an offense under Section 20A.02(a)(5), (6), (7), or
26 (8), Penal Code, or the failure to make a reasonable effort to
27 prevent a child from being trafficked in a manner punishable as an

1 offense under any of those sections; or

2 (M) forcing or coercing a child to enter into a
3 marriage.

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

9 (4) "Neglect":

10 (A) includes:

11 (i) the leaving of a child in a situation
12 where the child would be exposed to a substantial risk of physical
13 or mental harm, without arranging for necessary care for the child,
14 and the demonstration of an intent not to return by a parent,
15 guardian, or managing or possessory conservator of the child;

16 (ii) the following acts or omissions by a
17 person:

18 (a) placing a child in or failing to
19 remove a child from a situation that a reasonable person would
20 realize requires judgment or actions beyond the child's level of
21 maturity, physical condition, or mental abilities and that results
22 in bodily injury or a substantial risk of immediate harm to the
23 child;

24 (b) failing to seek, obtain, or follow
25 through with medical care for a child, with the failure resulting in
26 or presenting a substantial risk of death, disfigurement, or bodily
27 injury or with the failure resulting in an observable and material

1 impairment to the growth, development, or functioning of the child;
2 (c) the failure to provide a child
3 with food, clothing, or shelter necessary to sustain the life or
4 health of the child, excluding failure caused primarily by
5 financial inability unless relief services had been offered and
6 refused;

7 (d) placing a child in or failing to
8 remove the child from a situation in which the child would be
9 exposed to a substantial risk of sexual conduct harmful to the
10 child; or

11 (e) placing a child in or failing to
12 remove the child from a situation in which the child would be
13 exposed to acts or omissions that constitute abuse under
14 Subdivision (1)(E), (F), (G), (H), or (K) committed against another
15 child; [~~or~~]

16 (iii) the failure by the person responsible
17 for a child's care, custody, or welfare to permit the child to
18 return to the child's home without arranging for the necessary care
19 for the child after the child has been absent from the home for any
20 reason, including having been in residential placement or having
21 run away; or

22 (iv) a negligent act or omission by an
23 employee, volunteer, or other individual working under the auspices
24 of a facility or program, including failure to comply with an
25 individual treatment plan, plan of care, or individualized service
26 plan, that causes or may cause substantial emotional harm or
27 physical injury to, or the death of, a child served by the facility

1 or program as further described by rule or policy; and

2 (B) does not include the refusal by a person
3 responsible for a child's care, custody, or welfare to permit the
4 child to remain in or return to the child's home resulting in the
5 placement of the child in the conservatorship of the department if:

6 (i) the child has a severe emotional
7 disturbance;

8 (ii) the person's refusal is based solely on
9 the person's inability to obtain mental health services necessary
10 to protect the safety and well-being of the child; and

11 (iii) the person has exhausted all
12 reasonable means available to the person to obtain the mental
13 health services described by Subparagraph (ii).

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

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

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

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

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

25 (E) personnel or a volunteer at a public or
26 private child-care facility that provides services for the child or
27 at a public or private residential institution or facility where

1 the child resides; or

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

8 SECTION 3. Section 261.101(b), Family Code, is amended to
9 read as follows:

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

1 SECTION 4. Sections 261.301(b) and (c), Family Code, are
2 amended to read as follows:

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

10 (1) Subchapter E; and

11 (2) the Human Resources Code.

12 (c) The department is not required to investigate a report
13 that alleges child abuse, ~~[or]~~ neglect, or exploitation by a person
14 other than a person responsible for a child's care, custody, or
15 welfare. The appropriate state or local law enforcement agency
16 shall investigate that report if the agency determines an
17 investigation should be conducted.

18 SECTION 5. Section 261.401(b), Family Code, is amended to
19 read as follows:

20 (b) Except as provided by Section 261.404 and Section
21 531.02013(1)(D), Government Code, a state agency that operates,
22 licenses, certifies, registers, or lists a facility in which
23 children are located or provides oversight of a program that serves
24 children shall make a prompt, thorough investigation of a report
25 that a child has been or may be abused, neglected, or exploited in
26 the facility or program. The primary purpose of the investigation
27 shall be the protection of the child.

1 SECTION 6. Sections 261.405(a) and (c), Family Code, are
2 amended to read as follows:

3 (a) Notwithstanding Section 261.001, in [~~It~~] this section:

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

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

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

20 (A) a public or private juvenile
21 pre-adjudication secure detention facility, including a holdover
22 facility;

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

27 (C) a public or private non-secure juvenile

1 post-adjudication residential treatment facility that is not
2 licensed by the Department of Family and Protective Services or the
3 Department of State Health Services.

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

8 (A) a juvenile justice alternative education
9 program;

10 (B) a non-residential program that serves
11 juvenile offenders under the jurisdiction of the juvenile court;
12 and

13 (C) a juvenile probation department.

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

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

27 SECTION 7. Section 531.02013, Government Code, is amended

1 to read as follows:

2 Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN
3 AGENCIES. The following functions are not subject to transfer
4 under Sections 531.0201 and 531.02011:

5 (1) the functions of the Department of Family and
6 Protective Services, including the statewide intake of reports and
7 other information, related to the following:

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

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

14 (i) in a facility operated, or in a facility
15 or by a person licensed, certified, or registered, by a state
16 agency; or

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

19 (C) prevention and early intervention services;
20 and

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

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

1 SECTION 8. (a) Subchapter B, Chapter 40, Human Resources
2 Code, is amended by adding Sections 40.039, 40.040, 40.041, and
3 40.042 to read as follows:

4 Sec. 40.039. REVIEW OF RECORDS RETENTION POLICY. The
5 department shall periodically review the department's records
6 retention policy with respect to case and intake records relating
7 to department functions. The department shall make changes to the
8 policy consistent with the records retention schedule submitted
9 under Section 441.185, Government Code, that are necessary to
10 improve case prioritization and the routing of cases to the
11 appropriate division of the department. The department may adopt
12 rules necessary to implement this section.

13 Sec. 40.040. CASE MANAGEMENT VENDOR QUALITY OVERSIGHT AND
14 ASSURANCE DIVISION; MONITORING OF CONTRACT ADHERENCE. (a) In this
15 section, "case management," "catchment area," and "community-based
16 care" have the meanings assigned by Section 264.151, Family Code.

17 (b) The department shall create within the department the
18 case management services vendor quality oversight and assurance
19 division. The division shall:

20 (1) oversee quality and ensure accountability of any
21 vendor that provides community-based care and full case management
22 services for the department under community-based care; and

23 (2) monitor the transfer from the department to a
24 vendor of full case management services for children and families
25 receiving services from the vendor, including any transfer
26 occurring under a pilot program.

27 (c) The commission shall contract with an outside vendor

1 with expertise in quality assurance to develop, in coordination
2 with the department, a contract monitoring system and standards for
3 the continuous monitoring of the adherence of a vendor providing
4 foster care services under community-based care to the terms of the
5 contract entered into by the vendor and the commission. The
6 standards must include performance benchmarks relating to the
7 provision of case management services in the catchment area where
8 the vendor operates.

9 (d) The division shall collect and analyze data comparing
10 outcomes on performance measures between catchment areas where
11 community-based care has been implemented and regions where
12 community-based care has not been implemented.

13 Sec. 40.041. OFFICE OF DATA ANALYTICS. The department
14 shall create an office of data analytics. The office shall report
15 to the deputy commissioner and may perform any of the following
16 functions, as determined by the department:

17 (1) monitor management trends;
18 (2) analyze employee exit surveys and interviews;
19 (3) evaluate the effectiveness of employee retention
20 efforts, including merit pay;

21 (4) create and manage a system for handling employee
22 complaints submitted by the employee outside of an employee's
23 direct chain of command, including anonymous complaints;

24 (5) monitor and provide reports to department
25 management personnel on:

26 (A) employee complaint data and trends in
27 employee complaints;

1 (B) compliance with annual department
2 performance evaluation requirements; and

3 (C) the department's use of positive performance
4 levels for employees;

5 (6) track employee tenure and internal employee
6 transfers within both the child protective services division and
7 the department;

8 (7) use data analytics to predict workforce shortages
9 and identify areas of the department with high rates of employee
10 turnover, and develop a process to inform the deputy commissioner
11 and other appropriate staff regarding the office's findings;

12 (8) create and monitor reports on key metrics of
13 agency performance;

14 (9) analyze available data, including data on employee
15 training, for historical and predictive department trends; and

16 (10) conduct any other data analysis the department
17 determines to be appropriate for improving performance, meeting the
18 department's current business needs, or fulfilling the powers and
19 duties of the department.

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

26 (b) For all investigations of child abuse, neglect, or
27 exploitation conducted by the child protective services division of

1 the department, the department shall adopt the definitions of
2 abuse, neglect, and exploitation provided in Section 261.001,
3 Family Code.

4 (c) The department shall establish standardized policies to
5 be used during investigations.

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

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

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

22 (g) The executive commissioner or the commissioner of the
23 department, as appropriate, may adopt rules to implement this
24 section.

25 (b) As soon as possible after the effective date of this
26 Act, the commissioner of the Department of Family and Protective
27 Services shall establish the office of data analytics required by

1 Section 40.041, Human Resources Code, as added by this section. The
2 commissioner and the executive commissioner of the Health and Human
3 Services Commission shall transfer appropriate staff as necessary
4 to conduct the duties of the office.

5 SECTION 9. Section 40.051, Human Resources Code, is amended
6 to read as follows:

7 Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department
8 shall develop a departmental strategic plan based on the goals and
9 priorities stated in the commission's coordinated strategic plan
10 for health and human services. The department shall also develop
11 its plan based on:

- 12 (1) furthering the policy of family preservation;
13 (2) the goal of ending the abuse and neglect of
14 children in the conservatorship of the department; and
15 (3) the goal of increasing the capacity and
16 availability of foster, relative, and kinship placements in this
17 state.

18 SECTION 10. (a) Section 40.058(f), Human Resources Code,
19 is amended to read as follows:

20 (f) A contract for residential child-care services provided
21 by a general residential operation or by a child-placing agency
22 must include provisions that:

- 23 (1) enable the department and commission to monitor
24 the effectiveness of the services;
25 (2) specify performance outcomes, financial penalties
26 for failing to meet any specified performance outcomes, and
27 financial incentives for exceeding any specified performance

1 outcomes;

2 (3) authorize the department or commission to
3 terminate the contract or impose monetary sanctions for a violation
4 of a provision of the contract that specifies performance criteria
5 or for underperformance in meeting any specified performance
6 outcomes;

7 (4) authorize the department or commission, an agent
8 of the department or commission, and the state auditor to inspect
9 all books, records, and files maintained by a contractor relating
10 to the contract; and

11 (5) are necessary, as determined by the department or
12 commission, to ensure accountability for the delivery of services
13 and for the expenditure of public funds.

14 (b) The Health and Human Services Commission shall, in a
15 contract for residential child-care services between the
16 commission and a general residential operation or child-placing
17 agency that is entered into on or after the effective date of this
18 section, including a renewal contract, include the provisions
19 required by Section 40.058(f), Human Resources Code, as amended by
20 this section.

21 (c) The Health and Human Services Commission shall seek to
22 amend contracts for residential child-care services entered into
23 with general residential operations or child-placing agencies
24 before the effective date of this section to include the provisions
25 required by Section 40.058(f), Human Resources Code, as amended by
26 this section.

27 (d) The Department of Family and Protective Services and the

1 Health and Human Services Commission may not impose a financial
2 penalty against a general residential operation or child-placing
3 agency under a contract provision described by Section 40.058(f)(2)
4 or (3), Human Resources Code, as amended by this section, until
5 September 1, 2018.

6 SECTION 11. (a) Subchapter C, Chapter 40, Human Resources
7 Code, is amended by adding Section 40.0581 to read as follows:

8 Sec. 40.0581. PERFORMANCE MEASURES FOR CERTAIN SERVICE
9 PROVIDER CONTRACTS. (a) The commission, in collaboration with the
10 department, shall contract with a vendor or enter into an agreement
11 with an institution of higher education to develop, in coordination
12 with the department, performance quality metrics for family-based
13 safety services and post-adoption support services providers. The
14 quality metrics must be included in each contract with those
15 providers.

16 (b) Each provider whose contract with the commission to
17 provide department services includes the quality metrics developed
18 under Subsection (a) must prepare and submit to the department a
19 report each calendar quarter regarding the provider's performance
20 based on the quality metrics.

21 (c) The commissioner shall compile a summary of all reports
22 prepared and submitted to the department by family-based safety
23 services providers as required by Subsection (b) and distribute the
24 summary to appropriate family-based safety services caseworkers
25 and child protective services region management once each calendar
26 quarter.

27 (d) The commissioner shall compile a summary of all reports

1 prepared and submitted to the department by post-adoption support
2 services providers as required by Subsection (b) and distribute the
3 summary to appropriate conservatorship and adoption caseworkers
4 and child protective services region management.

5 (e) The department shall make the summaries prepared under
6 Subsections (c) and (d) available to families that are receiving
7 family-based safety services and to adoptive families.

8 (f) This section does not apply to a provider that has
9 entered into a contract with the commission to provide family-based
10 safety services under Section 264.165, Family Code.

11 (b) The quality metrics required by Section 40.0581, Human
12 Resources Code, as added by this section, must be developed not
13 later than September 1, 2018, and included in any contract,
14 including a renewal contract, entered into by the Health and Human
15 Services Commission with a family-based safety services provider or
16 a post-adoption support services provider on or after January 1,
17 2019, except as provided by Section 40.0581(f), Human Resources
18 Code, as added by this section.

19 SECTION 12. Section 42.002(23), Human Resources Code, is
20 amended to read as follows:

21 (23) "Other maltreatment" means:

22 (A) abuse, as defined by Section 261.001 [~~or~~
23 ~~261.401~~], Family Code; or

24 (B) neglect, as defined by Section 261.001 [~~or~~
25 ~~261.401~~], Family Code.

26 SECTION 13. Section 42.044(c-1), Human Resources Code, is
27 amended to read as follows:

1 (c-1) The department:

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

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

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

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

12 SECTION 14. Section 261.401(a), Family Code, is repealed.

13 SECTION 15. (a) The changes in law made by this Act apply
14 only to a report of suspected abuse, neglect, or exploitation of a
15 child that is made on or after the effective date of this Act. A
16 report of suspected abuse, neglect, or exploitation that is made
17 before that date is governed by the law in effect on the date the
18 report was made, and that law is continued in effect for that
19 purpose.

20 (b) Notwithstanding any provision of Subchapter A-1,
21 Chapter 531, Government Code, or any other law, the responsibility
22 for conducting investigations of reports of abuse, neglect, or
23 exploitation occurring at a child-care facility, as that term is
24 defined in Section 40.042, Human Resources Code, as added by this
25 Act, may not be transferred to the Health and Human Services
26 Commission and remains the responsibility of the Department of
27 Family and Protective Services.

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

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

14 SECTION 16. This Act takes effect September 1, 2017.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB249 by Hernandez (Relating to investigations of child abuse, neglect, or exploitation and to child protective services functions of the Department of Family and Protective Services.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code, Government Code, and Human Resources Code relating to investigations of child abuse, neglect, or exploitation and to child protective services functions of the Department of Family and Protective Services.

The bill would transfer certain investigations of abuse, neglect, or exploitation at licensed child care facilities from the Health and Human Services Commission (HHSC) to the Department of Family and Protective Services (DFPS). This analysis assumes that the cost to the state would be net zero as any additional costs at DFPS would be offset by corresponding cost savings at HHSC.

The analysis assumes that the remaining duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 644 Juvenile Justice Department, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of

LBB Staff: UP, SD, KCA, JLi, EP, MDI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 21, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB249 by Hernandez (Relating to investigations of child abuse, neglect, or exploitation and to child protective services functions of the Department of Family and Protective Services.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code, Government Code, and Human Resources Code relating to investigations of child abuse, neglect, or exploitation and to child protective services functions of the Department of Family and Protective Services.

The bill would transfer certain investigations of abuse, neglect, or exploitation at licensed child care facilities from the Health and Human Services Commission (HHSC) to the Department of Family and Protective Services (DFPS). This analysis assumes that the cost to the state would be net zero as any additional costs at DFPS would be offset by corresponding cost savings at HHSC.

The analysis assumes that the remaining duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 644 Juvenile Justice Department, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, JLi, EP, MDI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 13, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB249 by Hernandez (Relating to investigations of abuse, neglect, or exploitation conducted by the Department of Family and Protective Services.), **As Engrossed**

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would amend the Family Code, Government Code, and Human Resources Code relating to investigations of abuse, neglect, or exploitation conducted by the Department of Family and Protective Services.

The bill would transfer certain investigations of abuse, neglect, or exploitation at licensed child care facilities from the Health and Human Services Commission (HHSC) to the Department of Family and Protective Services (DFPS). This analysis assumes that the cost to the state would be net zero as any additional costs at DFPS would be offset by corresponding cost savings at HHSC.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 644 Juvenile Justice Department, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, JLi, EP, MDI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 2, 2017

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB249 by Hernandez (Relating to investigations of abuse, neglect, or exploitation conducted by the Department of Family and Protective Services.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code, Government Code, and Human Resources Code relating to investigations of abuse, neglect, or exploitation conducted by the Department of Family and Protective Services.

The bill would transfer the investigations of abuse, neglect, or exploitation at licensed child care facilities from the Health and Human Services Commission (HHSC) to the Department of Family and Protective Services (DFPS). This analysis assumes that the cost to the state would be net zero as any additional costs at DFPS would be offset by corresponding cost savings at HHSC.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission, 530 Family and Protective Services, Department of

LBB Staff: UP, KCA, JLi, EP, MDI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

February 26, 2017

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB249 by Hernandez (Relating to the definitions of abuse and neglect of a child applicable to investigations of abuse and neglect in certain facilities.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code and the Human Resources Code to clarify the definitions of abuse and neglect used in the investigation and resolution of reports of abuse, neglect, and exploitation of children in certain state regulated facilities and child care programs. The bill would take effect September 1, 2017.

Based on the LBB's analysis of the Health and Human Services Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: UP, KCA, EP, MDI