

## **BILL ANALYSIS**

C.S.H.B. 459  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent reports of deaths and sexual abuse involving day-care centers have sparked calls to increase accountability and oversight for day-care operators. C.S.H.B. 459 seeks to provide this accountability and oversight by establishing requirements for the placement and use of video recording equipment in day-care centers.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 459 amends the Human Resources Code to require each day-care center that provides care for children who are two years of age or younger to place video recording equipment in each area of the center occupied by children who are two years of age or younger and to record each of those areas any time such children are present in the area.

C.S.H.B. 459 establishes that, if a day-care center is inside of or connected to a school, office building, or other facility, the day-care center is only required to record areas used by the center as classrooms and establishes that a day-care center is not required to operate such equipment when children who are two years of age or younger are not present in the day-care center.

C.S.H.B. 459 requires the equipment to visually monitor and record video in all areas of the day-care center occupied by children who are two years of age or younger. The bill prohibits the inside of a bathroom or any area in the day-care center other than the main instructional area of a classroom in which a child's clothes or diapers are changed from being visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of the center.

C.S.H.B. 459 authorizes a day-care center to temporarily turn off video recording equipment that is visually monitoring the main instructional area of a classroom while that area is used by children to change clothes or by staff to change a child's clothes or diaper and requires the day-care center to resume recording the main instructional area once the area is no longer used for those purposes.

C.S.H.B. 459 requires a day-care center to retain video recorded from the equipment for at least 30 days after the date the video is recorded.

C.S.H.B. 459 makes confidential a video of a child recorded from the equipment and prohibits the release or viewing of such a video except by the following persons:

- an employee who is involved in an alleged incident that is documented by the video and has been applicably reported;
- a parent of a child who is involved in such an alleged incident on request of the parent; or
- appropriate Health and Human Services Commission (HHSC), Department of Family and Protective Services, or law enforcement personnel as part of an investigation of a report of alleged or suspected abuse or neglect of a child or of a violation of a licensing standard or as part of a monitoring inspection.

C.S.H.B. 459 requires a day-care center, if such a person requests to view the video, to retain the video from the date the request is received until the person views the video and a determination is made as to whether the video documents an alleged incident or, if the video documents an alleged incident, until the alleged incident is resolved, including the exhaustion of all appeals. The bill establishes that a contractor or employee performing job duties relating to the installation, operation, or maintenance of video recording equipment or the retention of recorded videos who incidentally views a video is not in violation of confidentiality provisions applicable to such a video.

C.S.H.B. 459 authorizes the executive commissioner of HHSC to adopt rules to implement and administer the bill's provisions. The bill establishes that a day-care center is not required to be equipped with the video recording equipment required by the bill's provisions before January 1, 2020.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 459 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions:

- making the bill's provisions applicable only to a day-care center that provides care for children who are two years of age or younger;
- establishing that a day-care center inside of or connected to a school, office building, or other facility is only required to record areas used as classrooms; and
- authorizing a day-care center to temporarily turn off recording equipment that is visually monitoring the main instructional area of a classroom while that area is used by children to change clothes or by staff to change a child's clothes or diaper but requiring the day-care center to resume recording that area once the area is no longer being used for those purposes.

The substitute does not include the requirement for each day-care center to record audio from all areas of the day-care center occupied by children.

The substitute changes the required retention period for a video and changes the entity to which an alleged incident documented by a video regarding an employee or a parent of a child has been reported.

The substitute includes HHSC and law enforcement personnel as entities to whom a day-care center is required to release a video for viewing and adds an investigation of a violation of a licensing standard or a monitoring inspection to the grounds triggering the required release of a video to such appropriate personnel.