

BILL ANALYSIS

C.S.H.B. 2055
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that too many people are unnecessarily being added to the central registry of reported cases of child abuse or neglect by the Department of Family and Protective Services (DFPS), and there have been calls to make certain updates to the procedures for adding names to or removing names from the registry. C.S.H.B. 2055 seeks to address these concerns and make those updates by providing for severity codes for each substantiated finding of abuse or neglect made by DFPS in a child abuse or neglect investigation relating to certain persons responsible for a child's care, custody, or welfare, by adjusting the records retention schedule for each severity code in the central registry, and by establishing an expungement review panel to review requests to have a person's name removed from the registry.

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 commissioner of the Department of Family and Protective Services in SECTIONS 1, 3, and 4 of this bill.

ANALYSIS

C.S.H.B. 2055 amends the Family Code to require the Department of Family and Protective Services (DFPS) to assign a severity code to each substantiated finding of abuse or neglect made by DFPS in a child abuse or neglect investigation relating to certain persons responsible for a child's care, custody, or welfare and sets out provisions providing for the following severity codes:

- the severity code "Low" for an isolated incident where there was a threat of harm but no injury to the child and the incident was due to an accident or parental mistake that does not pose an ongoing risk of harm beyond the incident;
- the severity code "Moderate" for an incident of abuse or neglect in which there is a low or moderate risk of future harm to a child, there are no unmanaged dangers in the home, the incident does not result in removal, and DFPS closes the investigation with a recommendation for community services;
- the severity code "Serious" for an incident of abuse or neglect in which there is a high risk of future harm to a child, there are unmanaged dangers in the home, and without services to the family removal of the child from the home would be necessary;
- the severity code "Severe" for an incident of abuse or neglect in which there is a very high risk of future harm to a child, there are unmanaged dangers in the home, and a court in a suit affecting the parent-child relationship renders an order removing the child from the home;

- the severity code "Near Fatal" for an incident of abuse or neglect in which a physician has certified that a child is in critical or serious condition and a caseworker determines that the child's condition was caused by the abuse or neglect of the child; and
- the severity code "Fatal" for an incident of abuse or neglect that results in a child fatality.

The bill provides the following:

- the "Low" severity code is limited to substantiated findings of neglectful supervision and DFPS may not use the severity code "Low" in an investigation of a school in which DFPS substantiated findings of abuse or neglect;
- the severity code "Moderate" is limited to substantiated findings of emotional abuse, neglectful supervision, and physical abuse consisting of an isolated incident of inappropriate discipline that does not require care by a medical provider or result in substantial injury to the child;
- the severity code "Serious" is limited to substantiated findings of emotional abuse, neglectful supervision, refusal to accept parental responsibility, medical or physical neglect if the incident did not result in any harm or injury to the child, and physical abuse excluding circumstances of physical abuse that resulted in serious injury to a child; and
- the severity code "Severe" is limited to substantiated findings of sexual abuse, physical abuse that resulted in serious injury to the child, medical or physical neglect that resulted or could have resulted in impairment to the child's overall health or well-being, sex or labor trafficking, forced marriage, and abandonment.

The bill makes these provisions relating to severity codes inapplicable to a person alleged to have abused or neglected a child at a licensed child-care facility, child-placing agency, or continuum-of-care residential operation or a registered family home. The commissioner of DFPS may adopt rules to implement the severity code provisions.

C.S.H.B. 2055 exempts a person whose case was assigned the severity code "Low" from the central registry of the names of persons found by DFPS to have abused or neglected a child. Before DFPS may add a person's name and information regarding the reported case of abuse or neglect to the registry, DFPS must provide written notice to the person that the person's name will be added to the registry and sets out the required contents of the notice. The bill requires DFPS to maintain the name of a person found by DFPS to have abused or neglected a child in the registry until, as follows:

- the fifth anniversary of the date of the finding for a case assigned the severity code "Moderate";
- the 15th anniversary of the date of the finding for a case assigned the severity code "Serious";
- the 30th anniversary of the date of the finding for a case assigned the severity code "Severe" or the 15th anniversary of the date of the finding if the court returned the child to the child's home during the period within which the court must render a final placement order; and
- the 99th anniversary of the date of the finding for a case assigned the severity code "Near Fatal" or "Fatal."

If the DFPS finding of abuse or neglect is sustained by an administrative law judge of the State Office of Administrative Hearings, DFPS must maintain the person's name in the central registry until the 20th anniversary of the date of the finding or the date so designated, whichever is longer. If a person is found by DFPS to have committed multiple acts of abuse or neglect and the findings are assigned different severity codes, DFPS must maintain the person's name in the central registry until the latest applicable date. The bill prohibits DFPS from maintaining a person's name in the central registry after the date DFPS disposes of the case records related to the investigation.

C.S.H.B. 2055 requires the commissioner to adopt rules for purposes of the central registry that require DFPS to remove a person's name from the registry not later than the 10th business day after the date the expungement review panel, as established by the bill, renders a decision to remove a person's name from the registry after conducting an expungement hearing. The bill

requires DFPS to remove from the central registry the name of any person against whom DFPS made a finding of abuse or neglect when the person was younger than 18 years of age if:

- two years have passed since DFPS made the finding;
- DFPS has not made any subsequent finding of abuse or neglect against the person;
- the person has not had a juvenile offender adjudication for any act other than the same incident that resulted in the finding made by DFPS; and
- the person has not had any criminal adjudications for an offense involving child abuse or neglect other than the incident that resulted in the finding made by DFPS.

C.S.H.B. 2055 authorizes DFPS to retain records related to a child abuse or neglect investigation in accordance with the DFPS records retention schedule after a person's name has been removed from the central registry in order to perform required background and criminal history checks and to conduct risk and safety assessments. DFPS must comply with a court order directing expunction of DFPS records concerning a person for whom DFPS maintains records.

C.S.H.B. 2055 requires DFPS to establish an expungement review panel to review requests to have a person's name removed from the central registry. The expungement review panel is composed of DFPS employees and a representative of the public appointed by the commissioner who serves a two-year term and may serve for not more than three terms. The bill does the following:

- sets out the conditions under which a person is prohibited from serving as a public member of the expungement review panel;
- specifies that the public member of the panel is a volunteer for purposes of state law for purposes of the requirement for DFPS to obtain criminal history background information maintained by the Department of Public Safety regarding certain individuals; and
- grants review panel members immunity from civil or criminal liability for any act or omission that relates to their duty or responsibility as a review panel member if they acted in good faith and within the scope of their responsibility.

C.S.H.B. 2055 requires a person who desires to have the person's name removed from the central registry to submit a written request to the commissioner that includes a letter describing the reason for the request. The bill does the following:

- sets out the categories of persons who may make a request to have their name removed from the registry;
- prohibits a person from making such a request before the third anniversary of the date DFPS made the most recent finding of child abuse or neglect against the person;
- requires the expungement review panel to deny a person's request if, after the person submits the request, DFPS makes a finding of child abuse or neglect against the person; and
- prohibits a person from submitting a subsequent request until the first anniversary of the date the review panel rendered a decision on the person's last request, if the expungement review panel denies the request after a hearing.

The bill establishes the conditions under which a person who has been determined by DFPS to have engaged in child abuse or neglect is not eligible for a review of a request to have the person's name removed from the central registry.

C.S.H.B. 2055 requires the commissioner, on receipt of a request to have the person's name removed from the central registry, to notify the expungement review panel of the request. The bill does the following:

- requires the review panel to set a date for a hearing on the request;
- sets out requirements regarding the hearing date and notice, including the requirement that the review panel hold the hearing not later than the 60th day after the date the commissioner receives the request, unless the review panel has good cause for holding the hearing after that date;
- authorizes the person requesting the review to present evidence at the hearing supporting removal of the person's name from the central registry;

- provides that the person has the burden of providing the expungement review panel with the basis for granting the request and may present certain evidence as specified by the bill; and
- authorizes the DFPS regional office that conducted the original investigation to present evidence in support of or in opposition to the request and make a recommendation regarding the request.

C.S.H.B. 2055 sets out the factors the expungement review panel must consider in making its decision and requires the review panel to do the following:

- unless the review panel has good cause for an extension, not later than the 45th day after the date of the hearing, render a written decision by majority vote of the review panel on the request that includes the review panel's reasons for the decision; and
- provide the written decision to the person requesting the review and to the DFPS commissioner, deputy commissioner, chief of staff, and associate commissioner for child protective investigations.

C.S.H.B. 2055 makes its provisions relating to removing names from the central registry of abuse and neglect inapplicable to persons alleged to have abused or neglected a child in a licensed child-care facility, child-placing agency, or continuum-of-care residential operation or a registered family home or to school investigations of abuse, neglect, or exploitation. The bill does the following:

- prohibits a person from having more than four hearings under those provisions;
- establishes that the review conducted under those provisions is confidential and not subject to disclosure under state public information law; and
- authorizes the commissioner to adopt rules to implement those provisions.

The bill's provisions relating to the central registry and to severity codes apply only to a finding of abuse or neglect made by DFPS on or after May 1, 2022.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2055 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.

Whereas the original made the bill's provisions relating to severity codes and to removing names from the central registry of abuse and neglect inapplicable to a person alleged to have abused or neglected a child at a child-care facility, the substitute does not. Instead, the substitute makes those provisions inapplicable to a person alleged to have abused or neglected a child at a licensed child-care facility, child-placing agency, or continuum-of-care residential operation or a registered family home.

The substitute includes provisions not in the original that require DFPS to do the following:

- if the findings are assigned different severity codes, maintain in the central registry until the latest applicable date the name of a person who is found by DFPS to have committed multiple acts of abuse or neglect; and
- provide certain written notice to the person that the person's name will be added to the registry before it is added to the registry.

Whereas the original required the expungement review panel members to serve two-year terms and not more than three terms, the substitute requires only the public member of the review panel to serve those terms. With respect to the review panel, the substitute includes provisions not in the original that do the following:

- require the review panel to deny a person's request if, after the person submits the request, DFPS makes a finding of child abuse or neglect against the person; and
- specify that the review panel is required to render a written decision on a request to have the person's name removed from the central registry unless the review panel has good cause for an extension.

The substitute makes certain revisions to the categories of persons who may make a request to have their name removed from the registry and also makes the bill's provisions relating to the central registry and to severity codes apply only to a finding of abuse or neglect made by DFPS on or after May 1, 2022.