87R9661 MLH-D

By:  Hall, Kolkhorst S.B. No. 1672

A BILL TO BE ENTITLED

AN ACT

relating to investigations of child abuse and neglect and the procedures for adding names to or removing names from the central registry of child abuse and neglect.

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

SECTION 1.  Section 261.002, Family Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), and (b-1) to read as follows:

(a)  The department shall establish and maintain a central registry of the names of persons [~~individuals~~] found by the department to have abused or neglected a child other than persons whose case was assigned the severity code "Low". Except as provided by Subsection (a-1), the department shall maintain the person's name in the registry until:

(1)  the fifth anniversary of the date of the finding for a case assigned the severity code "Moderate";

(2)  the 15th anniversary of the date of the finding for a case assigned the severity code "Serious";

(3)  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 order under Chapter 263; and

(4)  the 99th anniversary of the date of the finding for a case assigned the severity code "Near Fatal" or "Fatal".

(a-1)  If the department's finding of abuse or neglect is sustained by an administrative law judge of the State Office of Administrative Hearings, the department shall maintain the person's name in the central registry until the 20th anniversary of the date of the finding or the date designated under Subsection (a), whichever is longer.

(a-2)  The department may not maintain a person's name in the central registry after the date the department disposes of the case records related to the investigation.

(b)  The [~~executive~~] commissioner shall adopt rules necessary to carry out this section. The rules shall:

(1)  prohibit the department from making a finding of abuse or neglect against a person in a case in which the department is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child;

(2)  establish guidelines for reviewing the records in the registry and removing those records in which the department was named managing conservator of a child who has a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child;

(3)  require the department to remove a person's name from the central registry maintained under this section not later than the 10th business day after:

(A)  the date the department receives notice that a finding of abuse and neglect against the person is overturned in:

(i) [~~(A)~~]  an administrative review or an appeal of the review conducted under Section 261.309(c);

(ii) [~~(B)~~]  a review or an appeal of the review conducted by the office of consumer relations [~~affairs~~] of the department; or

(iii) [~~(C)~~]  a hearing or an appeal conducted by the State Office of Administrative Hearings; or

(B)  the date the expungement review panel renders a decision to remove a person's name from the registry after conducting an expungement hearing under Subchapter G; and

(4)  require the department to update any relevant department files to reflect an overturned finding of abuse or neglect against a person not later than the 10th business day after the date the finding is overturned in a review, hearing, or appeal described by Subdivision (3).

(b-1)  The department shall remove from the central registry the name of any person against whom the department made a finding of abuse or neglect when the person was younger than 18 years of age if:

(1)  two years have passed since the department made the finding;

(2)  the department has not made any subsequent finding of abuse or neglect against the person;

(3)  the person has not had a juvenile offender adjudication for any act other than the incident that resulted in the finding made by the department; and

(4)  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 the department.

SECTION 2.  Subchapter A, Chapter 261, Family Code, is amended by adding Section 261.0021 to read as follows:

Sec. 261.0021.  NOTICE BEFORE ADDING ALLEGED OFFENDER TO CENTRAL REGISTRY. Before the department may add a person's name and information regarding the reported case of abuse or neglect to the central registry maintained under Section 261.002, the department shall provide written notice to the person that the person will be added to the registry. The notice must include:

(1)  a clear statement of what the central registry is; and

(2)  the consequences of being listed in the central registry, including any possible negative impact on the person's ability to obtain employment or certain licenses and to have future contact with children, including any limitation on volunteering or involvement in school activities.

SECTION 3.  Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3081 to read as follows:

Sec. 261.3081.  SEVERITY CODES. (a) The department shall assign a severity code as provided by this section to each substantiated finding of abuse or neglect made by the department in an investigation relating to a person described in Sections 261.001(5)(A)-(D).

(b)  The department shall assign the severity code "Low" to 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 "Low" severity code is limited to substantiated findings of neglectful supervision. The department may not use the severity code "Low" in an investigation of a school under Section 261.406 in which the department substantiated findings of abuse or neglect.

(c)  The department shall assign the severity code "Moderate" to 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 the department closes the investigation with a recommendation for community services. 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.

(d)  The department shall assign the severity code "Serious" to 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 "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.

(e)  The department shall assign the severity code "Severe" to 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 "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.

(f)  The department shall assign the severity code "Near Fatal" to an incident of abuse or neglect that meets the definition of near fatality in Section 264.5031.

(g)  The department shall assign the severity code "Fatal" to an incident of abuse or neglect that results in a child fatality.

(h)  This section does not apply to a person alleged to have abused or neglected a child at a child-care facility as defined by Section 42.002(3), Human Resources Code.

(i)  The commissioner may adopt rules to implement this section.

SECTION 4.  Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.317 to read as follows:

Sec. 261.317.  RECORDS RETENTION; EXPUNCTION. (a) The department may retain records related to an investigation under this chapter in accordance with the department's records retention schedule after a person's name has been removed from the central registry in order to perform background checks required under Section 42.056, Human Resources Code, and to conduct risk and safety assessments.

(b)  The department shall comply with a court order directing expunction of the department's records concerning a person for whom the department maintains records.

SECTION 5.  Chapter 261, Family Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. REMOVING NAMES FROM CENTRAL REGISTRY OF ABUSE AND NEGLECT

Sec. 261.601.  DEFINITION. In this subchapter, "central registry" means the central registry of the names of persons found by the department to have abused or neglected a child maintained by the department under Section 261.002.

Sec. 261.602.  NONAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to persons alleged to have abused or neglected a child in a child-care facility as defined by Section 42.002(3), Human Resources Code, or to school investigations conducted under Section 261.406.

Sec. 261.603.  EXPUNGEMENT REVIEW PANEL; MEMBERS. (a) The department shall establish an expungement review panel to review requests to have a person's name removed from the central registry.

(b)  The expungement review panel is composed of department employees and a representative of the public appointed by the commissioner. Members of the review panel serve two-year terms and may serve for not more than three terms.

(c)  A person may not serve as a public member of the expungement review panel if the person:

(1)  has been convicted of or indicted for an offense involving child abuse or neglect;

(2)  has been determined by the department to have engaged in child abuse or neglect; or

(3)  is under investigation by the department for child abuse or neglect.

(d)  The public member of the expungement review panel is a department volunteer for the purposes of Section 411.114, Government Code.

(e)  The members of the expungement review panel are immune from civil or criminal liability for any act or omission that relates to their duty or responsibility as a member of the review panel if they acted in good faith and within the scope of their responsibility, as provided in Section 40.061, Human Resources Code.

Sec. 261.604.  REQUEST FOR REMOVAL OF NAME. (a) A person who desires to have the person's name removed from the central registry shall submit a written request to the commissioner that includes a letter describing the reason for the request.

(b)  Only the following persons may make a request to have their name removed from the central registry as provided by this subchapter:

(1)  a parent, guardian, or managing or possessory conservator of the child;

(2)  a member of the child's family or household as defined by Chapter 71; and

(3)  a person with whom the child's parent cohabits.

(c)  A person may not make a request under this section before the third anniversary of the date the department made the finding of child abuse or neglect.

(d)  If the expungement review panel denies a request under this section after a hearing, the person may not submit a subsequent request until the first anniversary of the date the review panel rendered a decision on the person's last request.

(e)  A person who has been determined by the department to have engaged in child abuse or neglect is not eligible for a review under this subchapter if:

(1)  the incident of abuse or neglect resulted in a child fatality or near fatality;

(2)  a court ordered termination of the parent-child relationship as a result of the abuse or neglect; or

(3)  following the date of the department's determination, the department makes another substantiated finding of abuse and neglect by the person or the person had a criminal adjudication for an offense involving child abuse or neglect.

Sec. 261.605.  HEARING DATE AND NOTICE; LIMITATION. (a) On receipt of a request under Section 261.604(a), the commissioner shall notify the expungement review panel of the request. The review panel shall set a date for a hearing on the request. The review panel shall hold the hearing not later than the 60th day after the date the commissioner receives the request, unless the panel has good cause for holding the hearing after that date.

(b)  The expungement review panel shall send written notice of the date, time, and location of the hearing to the requestor and the regional office that conducted the original investigation.

Sec. 261.606.  REVIEW HEARING. (a) At the hearing, the person requesting the review may present evidence supporting removal of the person's name from the central registry. The person has the burden of providing the expungement review panel with the basis for granting the request and may present evidence including:

(1)  completion of treatment services or programs related to the finding;

(2)  letters of support from professionals or others;

(3)  evidence of activities that would reflect upon the person's changed behavior or circumstances such as therapy, employment, or education; and

(4)  any other relevant evidence that shows changed circumstances.

(b)  The regional office of the department that conducted the original investigation may:

(1)  present evidence in support of or in opposition to the request; and

(2)  make a recommendation regarding the request.

Sec. 261.607.  EXPUNGEMENT REVIEW PANEL'S DECISION. (a) Not later than the 45th day after the date of the hearing, the expungement review panel shall render a written decision on the request that includes the review panel's reasons for the decision. The review panel's decision must be by majority vote.

(b)  The expungement review panel shall provide the written decision to the person requesting the review and to the department's commissioner, deputy commissioner, chief of staff, and associate commissioner for child protective investigations.

(c)  The expungement review panel shall consider the following factors in making its decision:

(1)  the nature and severity of the allegations of abuse or neglect and the circumstances surrounding the allegations;

(2)  the number of findings of abuse or neglect involving the person;

(3)  whether the person was a child at the time the finding of abuse or neglect was made and the person's age at the time of the incident;

(4)  whether the circumstances that contributed to the incident of abuse or neglect still exist;

(5)  actions taken by the person since the incident to prevent the reoccurrence of abuse or neglect, including participation in and completion of services and programs related to the allegations; and

(6)  any other relevant information that shows that the person no longer poses a risk to the safety and well-being of the alleged victim, other children, and vulnerable adults.

Sec. 261.608.  LIMIT ON NUMBER OF REVIEW HEARINGS. A person may not have more than four hearings under this subchapter.

Sec. 261.609.  CONFIDENTIALITY. The review conducted under this subchapter is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 261.610.  RULEMAKING. The commissioner may adopt rules to implement this subchapter.

SECTION 6.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.