

By: Gates

H.B. No. 1895

A BILL TO BE ENTITLED

1 AN ACT
2 relating to procedures in suits affecting the parent-child
3 relationship involving the Department of Family and Protective
4 Services and to reports of child abuse or neglect; creating a civil
5 cause of action.

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

7 SECTION 1. Chapter 104, Family Code, is amended by adding
8 Sections 104.009 and 104.010 to read as follows:

9 Sec. 104.009. ADMISSIBILITY OF CERTAIN EVIDENCE. Except as
10 otherwise provided by law, Article 38.23, Code of Criminal
11 Procedure, applies to the admissibility of evidence in a suit filed
12 by the Department of Family and Protective Services under Chapter
13 161 or 262 in the same manner as if the person responsible for a
14 child's care, custody, or welfare was a defendant in a criminal
15 prosecution.

16 Sec. 104.010. DUTY TO DISCLOSE CERTAIN INFORMATION TO
17 PARENT. (a) In a suit filed by the Department of Family and
18 Protective Services under Chapter 161, 261, or 262 against a person
19 responsible for a child's care, custody, or welfare, the department
20 and the attorney for the state shall disclose to the person any
21 exculpatory, impeachment, or mitigating document, item, or
22 information in the possession, custody, or control of the state
23 that tends to disprove an allegation against the person as soon as
24 practicable after obtaining the document, item, or information.

1 (b) The Department of Family and Protective Services and the
2 attorney for the state shall disclose a document, item, or
3 information under this section in a manner consistent with any laws
4 protecting the confidentiality of any person who made a report on
5 which the suit is based.

6 SECTION 2. Chapter 105, Family Code, is amended by adding
7 Sections 105.010 and 105.011 to read as follows:

8 Sec. 105.010. LIMITING PRIOR RESTRAINTS ON SPEECH. In a
9 suit filed by the Department of Family and Protective Services
10 under Chapter 161 or 262, the court may not render an order that
11 limits the speech of any person unless:

12 (1) a party to the suit files a motion with the court
13 requesting the order;

14 (2) notice of the hearing is served on the parties not
15 later than 72 hours before the time specified for the hearing;

16 (3) after the hearing, the court determines that:

17 (A) failure to limit the speech will cause an
18 imminent and irreparable harm to the judicial process and deprive
19 the parties of a just resolution of their dispute; and

20 (B) the judicial action requested represents the
21 least restrictive means to prevent that harm; and

22 (4) the order is reduced to writing and signed by the
23 judge.

24 Sec. 105.011. CERTAIN EVALUATIONS AND ASSESSMENTS
25 PROHIBITED. In a suit filed by the Department of Family and
26 Protective Services under Chapter 161 or 262, the court may not
27 order a person responsible for a child's care, custody, or welfare

1 to submit to a diagnostic assessment, educational assessment,
2 neurological assessment, psychosocial assessment, psychiatric or
3 psychological evaluation, or similar evaluation or assessment.

4 SECTION 3. Section 106.002, Family Code, is amended by
5 adding Subsection (a-1) to read as follows:

6 (a-1) In a suit filed by the Department of Family and
7 Protective Services under Chapter 261 or 262, the court shall
8 include reasonable attorney's fees and expenses in any judgment for
9 the person responsible for a child's care, custody, or welfare.

10 SECTION 4. Section 261.101(a), Family Code, is amended to
11 read as follows:

12 (a) An officer, employee, or agent of a governmental entity
13 ~~[A person]~~ having cause to believe that a child's physical or mental
14 health or welfare has been adversely affected by abuse or neglect by
15 any person shall immediately make a report as provided by this
16 subchapter.

17 SECTION 5. Section 261.104, Family Code, is amended to read
18 as follows:

19 Sec. 261.104. CONTENTS OF REPORT. The person making a
20 report shall:

- 21 (1) identify, if known:
22 (A) [~~(1)~~] the name and address of the child;
23 (B) [~~(2)~~] the name and address of the person
24 responsible for the care, custody, or welfare of the child; and
25 (C) [~~(3)~~] any other pertinent information
26 concerning the alleged or suspected abuse or neglect; and

27 (2) provide the person's name, address, and telephone

1 number.

2 SECTION 6. The heading to Section 261.107, Family Code, is
3 amended to read as follows:

4 Sec. 261.107. FALSE REPORT; CRIMINAL PENALTY; CIVIL
5 PENALTY; CIVIL ACTION.

6 SECTION 7. Section 261.107, Family Code, is amended by
7 amending Subsections (a) and (d) and adding Subsection (f) to read
8 as follows:

9 (a) A person commits an offense if [~~, with the intent to~~
10 ~~deceive,~~] the person knowingly makes a report as provided in this
11 chapter that is false. An offense under this subsection is a state
12 jail felony unless it is shown on the trial of the offense that the
13 person has previously been convicted under this section, in which
14 case the offense is a felony of the third degree.

15 (d) The court shall order a person who engages in conduct
16 described by [~~is convicted of an offense under~~] Subsection (a) to
17 pay any reasonable attorney's fees incurred by the person who was
18 falsely accused of abuse or neglect in any proceeding relating to
19 the false report, including an action under Subsection (f).

20 (f) A person who engages in conduct described by Subsection
21 (a) is liable to the person who was falsely accused of abuse or
22 neglect for all damages, including actual, consequential, and
23 exemplary damages, and any other relief to which the person who was
24 falsely accused may be entitled at law or in equity. Nothing in
25 this section prohibits a person who is falsely accused of abuse or
26 neglect from bringing a civil action against a person who engages in
27 conduct described by Subsection (a) seeking damages authorized by

1 this subsection.

2 SECTION 8. Section 261.201, Family Code, is amended by
3 adding Subsection (m) to read as follows:

4 (m) In a suit filed by the department under Chapter 161 or
5 262, if a court makes a finding under Rule 508(c)(2)(B), Texas Rules
6 of Evidence, but the department elects not to disclose the identity
7 of the person who made a report on which the suit is based, the
8 court:

9 (1) on a party's motion, shall dismiss the suit to
10 which the person's testimony would relate; or

11 (2) on its own motion, may dismiss the suit to which
12 the person's testimony would relate.

13 SECTION 9. Section 261.304, Family Code, is amended by
14 adding Subsection (d) to read as follows:

15 (d) At the time of the initial contact during an
16 investigation of a person responsible for a child's care, custody,
17 or welfare, the department shall disclose to the person if the
18 report of abuse or neglect was made anonymously.

19 SECTION 10. The changes in law made by this Act apply only
20 to a suit affecting the parent-child relationship filed on or after
21 the effective date of this Act. A suit affecting the parent-child
22 relationship filed before the effective date of this Act is
23 governed by the law in effect on the date the suit was filed, and the
24 former law is continued in effect for that purpose.

25 SECTION 11. The changes in law made by this Act apply only
26 to a report of suspected abuse or neglect made on or after the
27 effective date of this Act. A report of suspected abuse or neglect

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1 made before that date is governed by the law in effect on the date
2 the report was made, and that law is continued in effect for that
3 purpose.

4 SECTION 12. This Act takes effect September 1, 2021.