

By: Klick

H.B. No. 2055

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

1 a case assigned the severity code "Near Fatal" or "Fatal".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) the person has not had any criminal adjudications

1 for an offense involving child abuse or neglect other than the
2 incident that resulted in the finding made by the department.

3 SECTION 2. Subchapter D, Chapter 261, Family Code, is
4 amended by adding Section 261.3081 to read as follows:

5 Sec. 261.3081. SEVERITY CODES. (a) The department shall
6 assign a severity code as provided by this section to each
7 substantiated finding of abuse or neglect made by the department in
8 an investigation relating to a person described in Sections
9 261.001(5)(A)-(D).

10 (b) The department shall assign the severity code "Low" to
11 an isolated incident where there was a threat of harm but no injury
12 to the child and the incident was due to an accident or parental
13 mistake that does not pose an ongoing risk of harm beyond the
14 incident. The "Low" severity code is limited to substantiated
15 findings of neglectful supervision. The department may not use the
16 severity code "Low" in an investigation of a school under Section
17 261.406 in which the department substantiated findings of abuse or
18 neglect.

19 (c) The department shall assign the severity code
20 "Moderate" to an incident of abuse or neglect in which there is a
21 low or moderate risk of future harm to a child, there are no
22 unmanaged dangers in the home, the incident does not result in
23 removal, and the department closes the investigation with a
24 recommendation for community services. The severity code
25 "Moderate" is limited to substantiated findings of emotional abuse,
26 neglectful supervision, and physical abuse consisting of an
27 isolated incident of inappropriate discipline that does not require

1 care by a medical provider or result in substantial injury to the
2 child.

3 (d) The department shall assign the severity code "Serious"
4 to an incident of abuse or neglect in which there is a high risk of
5 future harm to a child, there are unmanaged dangers in the home, and
6 without services to the family removal of the child from the home
7 would be necessary. The severity code "Serious" is limited to
8 substantiated findings of emotional abuse, neglectful supervision,
9 refusal to accept parental responsibility, medical or physical
10 neglect if the incident did not result in any harm or injury to the
11 child, and physical abuse excluding circumstances of physical abuse
12 that resulted in serious injury to a child.

13 (e) The department shall assign the severity code "Severe"
14 to an incident of abuse or neglect in which there is a very high risk
15 of future harm to a child, there are unmanaged dangers in the home,
16 and a court in a suit affecting the parent-child relationship
17 renders an order removing the child from the home. The severity
18 code "Severe" is limited to substantiated findings of sexual abuse,
19 physical abuse that resulted in serious injury to the child,
20 medical or physical neglect that resulted or could have resulted in
21 impairment to the child's overall health or well-being, sex or
22 labor trafficking, forced marriage, and abandonment.

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

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

1 neglected a child in a child-care facility as defined by Section
2 42.002(3), Human Resources Code, or to school investigations
3 conducted under Section 261.406.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) following the date of the department's

1 determination, the department makes another substantiated finding
2 of abuse and neglect by the person or the person had a criminal
3 adjudication for an offense involving child abuse or neglect.

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

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

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

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

21 (2) letters of support from professionals or others;

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

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

27 (b) The regional office of the department that conducted the

1 original investigation may:

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

4 (2) make a recommendation regarding the request.

5 Sec. 261.607. EXPUNGEMENT REVIEW PANEL'S DECISION. (a)

6 Not later than the 45th day after the date of the hearing, the
7 expungement review panel shall render a written decision on the
8 request that includes the review panel's reasons for the decision.

9 The review panel's decision must be by majority vote.

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

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

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

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

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

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

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

1 the allegations; and

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

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

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

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

12 SECTION 5. This Act takes effect September 1, 2021.