

BILL ANALYSIS

S.B. 515
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Individuals in Texas are being placed in the Department of Family and Protective Services' (DFPS) central registry for child abuse and neglect without receiving adequate notification and without knowledge of what placement in the registry could mean for them. Placement in the central registry can have a negative impact on future employment, the ability to obtain certain licenses, or to volunteer in activities that involve contact with children.

Moreover, once in the central registry, it is very difficult to have one's name removed. The enormous backlog of cases with the State Office of Administrative Hearings only lengthens the process of removal.

S.B. 515 seeks to revise provisions governing the central registry to address these concerns. More specifically, the bill seeks to require DFPS to establish a system of severity codes for cases and a timeline for retention in the registry based on severity. Moreover, the bill would exclude from the registry individuals whose cases involve an assignment of severity code "low," require that a person's name be removed from the registry after the date DFPS disposes of the case records, and require DFPS to notify individuals in writing that they are being placed in the registry and what the consequences are for that decision. Further, the bill seeks to provide a process for removal of names from the central registry upon request and after a review by an expungement review panel.

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 5 of this bill.

ANALYSIS

S.B. 515 amends the Family Code to set out and revise provisions 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.

Severity Codes

S.B. 515 requires 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 an investigation relating to any of the following persons responsible for a child's care, custody, or welfare:

- the child's parent, guardian, managing or possessory conservator, or foster parent;

- a member of the child's family or household;
- a person with whom the child's parent cohabits; or
- school personnel or a volunteer at the child's school.

S.B. 515 requires DFPS to assign severity codes as follows:

- "low" to an isolated incident where there was a threat of harm but no injury to a child and the incident was due to an accident or parental mistake that does not pose an ongoing risk of harm beyond the incident;
- "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 DFPS closes the investigation with a recommendation for community services;
- "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;
- "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;
- "near fatal" to an incident of abuse or neglect where 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
- "fatal" to an incident of abuse or neglect that results in a child fatality.

S.B. 515 establishes the following limitations on the use of certain of those severity codes:

- "low" is limited to substantiated findings of neglectful supervision and may not be used in an investigation of abuse, neglect, or exploitation in a school in which DFPS substantiated findings of abuse or neglect;
- "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;
- "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 the child; and
- "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.

S.B. 515 authorizes the commissioner of DFPS to adopt rules to implement the bill's provisions providing for the use of severity codes. The bill establishes that those provisions apply only to a finding of abuse or neglect made by DFPS on or after the bill's effective date and exempts from those provisions a person alleged to have abused or neglected a child in a state-regulated child-care facility or family home.

S.B. 515 provides for the exclusion from the central registry of child abuse and neglect persons whose case was assigned the severity code of "low." With respect to the cases assigned a severity code other than "low," the bill requires DFPS to maintain the person's name in the registry until the following date:

- for a case assigned the severity code "moderate," the fifth anniversary of the date of the finding;
- for a case assigned the severity code "serious," the 15th anniversary of the date of the finding;

- for a case assigned the severity code "severe," the 30th anniversary of the date of the finding 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 following review of the placement of a placement under care of DFPS; and
- for a case assigned the severity code "near fatal" or "fatal," the 99th anniversary of the date of the finding.

If DFPS's 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 designated for the respective severity code, whichever is longer. 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.

Notice Before Adding Offender to Central Registry

S.B. 515 requires DFPS to provide written notice to a person that the person will be added to the central registry before DFPS may add the person's name and information regarding the reported case of abuse or neglect to the registry. The notice must include a clear statement of what the central registry is and the consequences of being listed in the 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 limit on the person's ability to volunteer at or be involved in school activities.

Removal of Certain Youthful Offenders From Central Registry

S.B. 515 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 the following criteria are satisfied:

- 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 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.

Removing Names from Central Registry; Expungement Review Panels

Expungement Review Panel; Members

S.B. 515 requires DFPS to establish expungement review panels to review requests to have a person's name removed from the central registry. The bill defines "central registry" as the central registry of the names of persons found by DFPS to have abused or neglected a child maintained by DFPS. The bill establishes that an expungement review panel is composed of DFPS employees and a representative of the public appointed by the commissioner of DFPS from a list created and maintained by DFPS of volunteers to serve as a public member for an expungement review panel. The bill provides the following with respect to a person who volunteers to serve on an expungement review panel:

- a person's name may be placed on the list for a period of two years and may not be placed on the list for more than three two-year periods;
- a person's name may not be placed on the list if they:
 - have been convicted of or indicted for an offense involving child abuse or neglect;
 - have been determined by DFPS to have engaged in child abuse or neglect; or
 - are under investigation by DFPS for child abuse or neglect; and

- a person who serves as a public member is considered a DFPS volunteer for purposes of Government Code provisions relating to DFPS access to criminal history record information.

The bill grants members of an expungement review panel immunity from civil or criminal liability for any act or omission that relates to their duty or responsibility as a member if they acted in good faith and within the scope of their responsibility. The bill makes information and documents considered by a review panel confidential and prohibits a member of the panel from disclosing any such information or documents.

Request for Removal of Name

S.B. 515 requires a person who desires to have their name removed from the central registry to submit a written request to the commissioner of DFPS that includes a letter describing the reason for the request. The bill limits who may make such a request to the child's parent, guardian, or managing or possessory conservator; a member of the child's family or household; or a person with whom the child's parent cohabits and prohibits a person from making the request before the third anniversary of the date DFPS made its most recent finding of child abuse or neglect. The bill prohibits a person whose request was denied by an expungement review panel after a hearing from submitting a subsequent request until the first anniversary of the date the review panel rendered a decision on the person's last request and prohibits a person from making a request for more than three hearings on a single finding of child abuse or neglect within a 10-year period.

S.B. 515 makes a person who has been determined by DFPS to have engaged in child abuse or neglect ineligible for a review for potential removal from the central registry if one of the following applies:

- the incident of abuse or neglect resulted in a child fatality or near fatality;
- a court ordered termination of the parent-child relationship as a result of the abuse or neglect; or
- following the date of the DFPS determination, DFPS 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.

The bill authorizes an ineligible person who is found to be ineligible for a review on that third basis to make another request after the third anniversary of the date DFPS made its most recent finding of child abuse or neglect.

Review Hearings; Date and Notice

S.B. 515 requires the commissioner of DFPS, on receipt of a request for a person's removal from the central registry, to establish an expungement review panel and notify the panel of the request. The bill requires the review panel to set a date for a hearing on the request and requires the review panel to 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. The bill requires the review panel to send written notice of the date, time, and location of the hearing to the requestor and the regional DFPS office that conducted the original investigation. The bill authorizes the review panel to conduct the hearing by telephone conference call, videoconference, or another similar telecommunications method if the panel determines that the method of appearance will facilitate the hearing.

S.B. 515 authorizes the person requesting the review to present evidence at the hearing supporting removal of their name from the central registry. The bill places the burden of providing the expungement review panel with the basis for granting the request on the person making the request and authorizes the person to present evidence including any of the following:

- completion of treatment services or programs related to the finding;
- letters of support from professionals or others;

- evidence of activities that would reflect upon the person's changed behavior or circumstances such as therapy, employment, or education; and
- any other relevant evidence that shows changed circumstances.

The bill authorizes the regional DFPS office that conducted the original investigation to present evidence in support of or in opposition to the request and to make a recommendation regarding the request.

Expungement Review Panel's Decision

S.B. 515 requires the review panel, not later than the 45th day after the date of the hearing, to 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 and the review panel must provide the written decision to the person requesting the review and to DFPS's commissioner, deputy commissioner, chief of staff, and associate commissioner for child protective investigations. The bill requires the review panel to consider the following factors in making its decision:

- the nature and severity of the allegations of abuse or neglect and the circumstances surrounding the allegations;
- the number of findings of abuse or neglect involving the person;
- 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;
- whether the circumstances that contributed to the incident of abuse or neglect still exist;
- 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
- 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.

S.B. 515 requires the rules governing the central registry to require DFPS to remove a person's name from the registry not later than the 10th business day after the date an expungement review panel renders a decision to remove the name from the registry after conducting an expungement hearing.

Miscellaneous Provisions; Applicability

S.B. 515 caps the total number of review hearings a person may have at four. The bill makes a review, including documents presented to and considered by the review panel, confidential and exempt from disclosure under state public information law. The bill authorizes the commissioner of DFPS to adopt rules to implement the bill's provisions relating to expungement review panels and the removal of names from the central registry. The bill exempts from those provisions persons alleged to have abused or neglected a child in a state-regulated child-care facility or family home or to a school investigation.

Records Retention; Expunction

S.B. 515 authorizes DFPS to retain records related to an investigation of reported child abuse or neglect in accordance with the DFPS records retention schedule after a person's name has been removed from the central registry in order to perform background checks required under Human Resources Code provisions regulating certain child-care facilities, homes, and agencies and to conduct risk and safety assessments. The bill requires DFPS to comply with a court order directing expunction of DFPS records concerning a person for whom DFPS maintains records.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.