

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 515
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Individuals in Texas are being placed on the Department of Family and Protective Services (DFPS) Child Abuse/Neglect Registry without receiving adequate notification and without knowledge of what placement on the registry could mean for them. Placement on this 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.

Many individuals are placed on the registry based on isolated incidents, or whose cases involve a very low risk. These individuals do not deserve placement on the registry. Once on the registry, it is very difficult to have one's name removed, and the enormous backlog of cases with the State Office of Administrative Hearings only lengthens the process.

This bill amends the Family Code regarding the Central Registry of names of individuals found by DFPS to have abused or neglected a child to establish a system of severity codes for cases and a timeline for retention on the registry based on severity. It would exclude individuals whose cases involve an assignment of severity code "low" from the registry, 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 on the registry, what the registry is, and what the consequences are for being on it.

Further, the bill requires removal from the registry the name of a person against whom a finding was made when the person was under the age of 18 who is otherwise in good standing and provides a process for removal of names from the Central Registry upon request through an expungement review panel.

These reforms are DFPS recommendations.

The procedures established in this bill would expedite the process of removing from the registry the names of individuals who have not posed a threat to children.

The methods provided in this bill would help DFPS triage cases more effectively, allowing more customized approaches to specific situations and the individuals who are affected.

This bill balances the interests and rights of individuals while ensuring that DFPS may carry out its mission of protecting children and promoting safe, healthy families.

The committee substitute clarifies that the assignment of severity codes will only apply to cases that are substantiated after the effective date of this bill. Individuals already in the system will be able to request a review by the expungement review panel.

C.S.S.B. 515 amends current law 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.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is transferred to the commissioner of the Department of Family and Protective Services and modified in SECTION 1 (Section 261.002, Family Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of the Department of Family and Protective Services in SECTION 3 (Section 261.3081, Family Code) and SECTION 5 (Section 261.610, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(a) Requires the Department of Family and Protective Services (DFPS) to establish and maintain a central registry of the names of persons, rather than individuals, found by DFPS to have abused or neglected a child other than persons whose case was assigned the severity code "Low." Requires DFPS to maintain the person's name in the registry, except as provided by Subsection (a-1), 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 is required to render a final order under Chapter 263 (Review of Placement of Children Under Care of Department of Family and Protective Services); and

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

(a-1) Requires DFPS to 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, if DFPS's finding of abuse or neglect is sustained by an administrative law judge of the State Office of Administrative Hearings (SOAH).

(a-2) 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.

(b) Requires the commissioner of DFPS (commissioner), rather than the executive commissioner of Health and Human Services Commission, to adopt rules necessary to carry out Section 261.002 (Central Registry). Requires that the rules:

(1)-(2) makes no changes to these subdivisions;

(3) require DFPS 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 DFPS receives notice that a finding of abuse and neglect against the person is overturned in:

(i) an administrative review or an appeal of the review conducted under Section 261.309(c) (relating to persons authorized to request an administrative review of certain DFPS findings);

(ii) a review or an appeal of the review conducted by the office of consumer relations, rather than the office of consumer affairs, of DFPS or its successor; or

(iii) a hearing or an appeal conducted by SOAH; 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) makes no changes to this subdivision.

(b-1) 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:

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

(2) DFPS 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 DFPS; 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 DFPS.

SECTION 2. Amends Subchapter A, Chapter 261, Family Code, by adding Section 261.0021, as follows:

Sec. 261.0021. NOTICE BEFORE ADDING OFFENDER TO CENTRAL REGISTRY. Requires DFPS to provide written notice to the person that the person will be added to the registry before DFPS is authorized to add a person's name and information regarding the reported case of abuse or neglect to the central registry maintained under Section 261.002. Requires that the notice 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 limit on the person's ability to volunteer at or be involved in school activities.

SECTION 3. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.3081, as follows:

Sec. 261.3081. SEVERITY CODES. (a) Requires DFPS to assign a severity code as provided by this section to each substantiated finding of abuse or neglect made by DFPS in an investigation relating to a person described in Sections 261.001(5)(A)-(D) (relating to the definition of "person responsible for a child's care, custody, or welfare").

(b) Requires DFPS to assign the severity code "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. Provides that the "Low" severity code is limited to substantiated findings of neglectful supervision. Prohibits DFPS from using the severity code "Low" in an investigation of a school under Section 261.406 (Investigation in Schools) in which DFPS substantiated findings of abuse or neglect.

(c) Requires DFPS to 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 DFPS closes the investigation with a recommendation for community services. Provides that 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) Requires DFPS to 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. Provides that 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 the child.

(e) Requires DFPS to 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. Provides that 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) Requires DFPS to assign the severity code "Near Fatal" to an incident of abuse or neglect that meets the definition of near fatality in Section 264.5031 (Collection of Near Fatality Data).

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

(h) Provides that this section does not apply to a person alleged to have abused or neglected a child at a child-care facility or family home as defined by Section 42.002 (Definitions), Human Resources Code.

(i) Authorizes the commissioner to adopt rules to implement this section.

SECTION 4. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.317, as follows:

Sec. 261.317. RECORDS RETENTION; EXPUNCTION. (a) Authorizes DFPS to retain records related to an investigation under Chapter 261 (Investigation of Report of Child Abuse or Neglect) in accordance with DFPS'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 (Required Background and Criminal History Checks; Criminal Penalties), Human Resources Code, and to conduct risk and safety assessments.

(b) Requires DFPS to comply with a court order directing expunction of DFPS's records concerning a person for whom DFPS maintains records.

SECTION 5. Amends Chapter 261, Family Code, by adding Subchapter G, as follows:

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

Sec. 261.601. DEFINITION. Defines "central registry."

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

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

(b) Provides that the expungement review panel is composed of DFPS employees and a representative of the public appointed by the commissioner. Provides that the public member of the review panel serves a two-year term and is prohibited from serving for more than three terms.

(c) Prohibits a person from serving 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 DFPS to have engaged in child abuse or neglect; or

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

(d) Provides that the public member of the expungement review panel is a DFPS volunteer for the purposes of Section 411.114 (Access to Criminal History Record Information: Department of Family and Protective Services and Health and Human Services Commission), Government Code.

(e) Provides that 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 (Immunity), Human Resources Code.

Sec. 261.604. REQUEST FOR REMOVAL OF NAME. (a) 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.

(b) Authorizes only the following persons to 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 (Definitions); and

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

(c) Prohibits a person from making a request under this section before the third anniversary of the date DFPS made its most recent finding of child abuse or neglect.

(d) Prohibits the person from submitting a subsequent request until the first anniversary of the date the expungement review panel rendered a decision on the person's last request if the review panel denies a request under this section after a hearing.

(e) Provides that a person who has been determined by DFPS 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 DFPS's 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.

(f) Authorizes a person found under Subsection (e)(3) to be ineligible for a review under this subchapter to make another request under this section after the period described in Subsection (c).

Sec. 261.605. HEARING DATE AND NOTICE; LIMITATION. (a) Requires the commissioner to notify the expungement review panel of the request on receipt of a request under Section 261.604(a). Requires the review panel to set a date for a hearing on the request. 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.

(b) Requires the expungement review panel to 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) Authorizes the person requesting the review to present evidence supporting removal of the person's name from the central registry at the hearing. Provides that the person has the burden of providing the expungement review panel with the basis for granting the request and is authorized to 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) Authorizes the regional office of DFPS that conducted the original investigation to:

(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) Requires the expungement review panel to render a written decision on the request that includes the review panel's reasons for the decision not later than the 45th date after the date of the hearing. Requires the review panel's decision to be by majority vote.

(b) Requires the expungement review panel to 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.

(c) Requires the expungement review panel to 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. Prohibits a person from having more than four hearings under this subchapter.

Sec. 261.609. CONFIDENTIALITY. Provides that a review conducted under this subchapter, including documents presented to and considered by the expungement review panel, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

Sec. 261.610. RULEMAKING. Authorizes the commissioner to adopt rules to implement this subchapter.

SECTION 6. Makes application of Section 261.3081, Family Code, as added by this Act, prospective.

SECTION 7. Effective date: upon passage or September 1, 2023.