

BILL ANALYSIS

Senate Research Center

S.B. 1163
By: Birdwell
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, when an individual is investigated by Child Protective Services under the Department of Family and Protective Services (DFPS) for allegations of child abuse or neglect, the initial investigating caseworker can make one of four determinations. They can determine the report of abuse or neglect to be ruled out, unable to determine, administratively closed, or "reason to believe." The individual's name is added to the central registry list if the case worker has "reason to believe." The central registry is a list of names maintained by DFPS for the purposes of internal background checks. The individual's name is added to the central registry before any investigation outside of DFPS is conducted, and before any judicial oversight examines the case.

Individuals added to the central registry face difficulties gaining employment with work involving children, and adopting children. Once an individual's name is added to the central registry, only DFPS and the State Office of Administrative Hearings (SOAH) can offer an appeal process to individuals to have their name removed from the registry. This process is lengthy and complex.

S.B. 1163 addresses the issue of due process being denied to individuals by requiring a court to substantiate the claim of child abuse or neglect before adding that individual's name to the central registry. Individuals added to the central registry are notified of:

- the consequences of having their name added to the central registry list; and
- the process of appealing to remove their name from the registry.

Also, if an individual whose name is on the central registry has the finding of abuse or neglect overturned in court, their name will be removed from the central registry list.

As proposed, S.B. 1163 amends current law relating to the procedures and notice required before an individual's name is added to the central child abuse or neglect registry.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 1 (Section 261.002, Family Code) of this bill.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 1 (Section 261.002, Family Code) and SECTION 3 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), (b-1), and (d), as follows:

(a) Requires the Department of Family and Protective Services (DFPS) to establish and maintain a central registry of the names of individuals found to have abused or neglected a child, rather than found by DFPS to have abused or neglected a child.

(a-1) Prohibits DFPS, except as provided by Subsection (a-2), from adding the name of an individual to the central registry maintained under Section 261.002 (Central Registry)

unless a court in any civil, criminal, administrative, or juvenile proceeding, including a proceeding under Subchapter C (Adversary Hearing), Chapter 262, or Section 264.203 (Required Participation), issues a final order finding that the individual abused or neglected a child.

(a-2) Authorizes DFPS to add the individual's name to the central registry maintained under this section without a court order finding that the individual abused or neglected the child if DFPS finds that an individual subjected a child to aggravated circumstances as described by Section 262.2015 (Aggravated Circumstances).

(b) Prohibits DFPS from finding that an individual abused or neglected a child in a case in which DFPS 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. Requires DFPS to establish guidelines for reviewing the records in the registry and removing those records in which DFPS 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.

Deletes existing text requiring the executive commissioner of the Health and Human Services Commission to adopt rules necessary to carry out this section. Makes a nonsubstantive change.

(b-1) Requires DFPS to:

(1) remove an individual's, rather than a person's, name from the central registry maintained under this section not later than the 10th business day after the date DFPS receives notice that a finding of abuse and neglect against the individual, rather than the person, is overturned in:

(A) makes no changes to this paragraph;

(B) a review or an appeal of the review conducted by the office of internal, rather than consumer, affairs of DFPS; or

(C) a hearing or an appeal conducted by the State Office of Administrative Hearings, a court of appeals, the Texas Court of Criminal Appeals, or the Supreme Court of Texas; and

(2) update any relevant DFPS files to reflect an overturned finding of abuse or neglect against an individual, rather than 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 (1), rather than Subdivision (3).

(d) Requires the commissioner of DFPS to adopt rules necessary to carry out this section, including rules to ensure substantial compliance with this section.

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

Sec. 261.0021. NOTICE BEFORE ALLEGED OFFENDER ADDED TO CENTRAL REGISTRY. Requires DFPS to provide written notice to the individual of the prospective addition to the registry not later than the 10th business day before the date DFPS adds an individual's name and information to the central registry maintained under Section 261.002. Requires that the notice include:

(1) a clear statement describing the purposes and scope of the registry;

(2) an explanation of the consequences of being listed in the registry, including any possible negative impact on the individual's ability to:

(A) obtain employment or certain licenses; and

(B) have future contact with children, including any limitation on volunteering or involvement in school activities; and

(3) information regarding the individual's right to challenge inclusion of the individual's name in the registry, including the procedures for challenging inclusion of the individual's name in the registry.

SECTION 3. (a) Requires the commissioner of DFPS to adopt the rules necessary to implement the changes in law made by this Act by amending Section 261.002, Family Code, and adding Section 261.0021, Family Code.

(b) Makes the changes in law made by this Act by amending Section 261.002, Family Code, and adding Section 261.0021, Family Code, prospective.

SECTION 4. Effective date: September 1, 2023.