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(Klick)

S.B. No. 515

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 affairs of the
5 department or its successor; or

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

8 (B) the date an 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 incident that resulted in
26 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 A, Chapter 261, Family Code, is
4 amended by adding Section 261.0021 to read as follows:

5 Sec. 261.0021. NOTICE BEFORE ADDING OFFENDER TO CENTRAL
6 REGISTRY. Before the department may add a person's name and
7 information regarding the reported case of abuse or neglect to the
8 central registry maintained under Section 261.002, the department
9 shall provide written notice to the person that the person will be
10 added to the registry. The notice must include:

11 (1) a clear statement of what the central registry is;
12 and

13 (2) the consequences of being listed in the central
14 registry, including any possible negative impact on the person's
15 ability to obtain employment or certain licenses and to have future
16 contact with children, including any limit on the person's ability
17 to volunteer at or be involved in school activities.

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

20 Sec. 261.3081. SEVERITY CODES. (a) The department shall
21 assign a severity code as provided by this section to each
22 substantiated finding of abuse or neglect made by the department in
23 an investigation relating to a person described in Sections
24 261.001(5)(A)-(D).

25 (b) The department shall assign the severity code "Low" to
26 an isolated incident where there was a threat of harm but no injury
27 to a child and the incident was due to an accident or parental

1 mistake that does not pose an ongoing risk of harm beyond the
2 incident. The "Low" severity code is limited to substantiated
3 findings of neglectful supervision. The department may not use the
4 severity code "Low" in an investigation of a school under Section
5 261.406 in which the department substantiated findings of abuse or
6 neglect.

7 (c) The department shall assign the severity code
8 "Moderate" to an incident of abuse or neglect in which there is a
9 low or moderate risk of future harm to a child, there are no
10 unmanaged dangers in the home, the incident does not result in
11 removal, and the department closes the investigation with a
12 recommendation for community services. The severity code
13 "Moderate" is limited to substantiated findings of emotional abuse,
14 neglectful supervision, and physical abuse consisting of an
15 isolated incident of inappropriate discipline that does not require
16 care by a medical provider or result in substantial injury to the
17 child.

18 (d) The department shall assign the severity code "Serious"
19 to an incident of abuse or neglect in which there is a high risk of
20 future harm to a child, there are unmanaged dangers in the home, and
21 without services to the family removal of the child from the home
22 would be necessary. The severity code "Serious" is limited to
23 substantiated findings of emotional abuse, neglectful supervision,
24 refusal to accept parental responsibility, medical or physical
25 neglect if the incident did not result in any harm or injury to the
26 child, and physical abuse excluding circumstances of physical abuse
27 that resulted in serious injury to the child.

1 (e) The department shall assign the severity code "Severe"
2 to an incident of abuse or neglect in which there is a very high risk
3 of future harm to a child, there are unmanaged dangers in the home,
4 and a court in a suit affecting the parent-child relationship
5 renders an order removing the child from the home. The severity
6 code "Severe" is limited to substantiated findings of sexual abuse,
7 physical abuse that resulted in serious injury to the child,
8 medical or physical neglect that resulted or could have resulted in
9 impairment to the child's overall health or well-being, sex or
10 labor trafficking, forced marriage, and abandonment.

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

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

16 (h) This section does not apply to a person alleged to have
17 abused or neglected a child at a facility or family home regulated
18 under Chapter [42](#), Human Resources Code.

19 (i) The commissioner may adopt rules to implement this
20 section.

21 SECTION 4. Subchapter [D](#), Chapter [261](#), Family Code, is
22 amended by adding Section 261.317 to read as follows:

23 Sec. 261.317. RECORDS RETENTION; EXPUNCTION. (a) The
24 department may retain records related to an investigation under
25 this chapter in accordance with the department's records retention
26 schedule after a person's name has been removed from the central
27 registry in order to perform background checks required under

1 Section 42.056, Human Resources Code, and to conduct risk and
2 safety assessments.

3 (b) The department shall comply with a court order directing
4 expunction of the department's records concerning a person for whom
5 the department maintains records.

6 SECTION 5. Chapter 261, Family Code, is amended by adding
7 Subchapter G to read as follows:

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

10 Sec. 261.601. DEFINITION. In this subchapter, "central
11 registry" means the central registry of the names of persons found
12 by the department to have abused or neglected a child maintained by
13 the department under Section 261.002.

14 Sec. 261.602. NONAPPLICABILITY OF SUBCHAPTER. This
15 subchapter does not apply to persons alleged to have abused or
16 neglected a child in a facility or family home regulated under
17 Chapter 42, Human Resources Code, or to school investigations
18 conducted under Section 261.406.

19 Sec. 261.603. EXPUNGEMENT REVIEW PANEL; MEMBERS. (a) The
20 department shall establish expungement review panels to review
21 requests to have a person's name removed from the central registry.

22 (b) An expungement review panel is composed of department
23 employees and a representative of the public appointed by the
24 commissioner from the list under Subsection (c).

25 (c) The department shall create and maintain a list of
26 volunteers from which to select a public member for an expungement
27 review panel.

1 (d) The name of a person who volunteers to serve on an
2 expungement review panel:

3 (1) may be placed on the list under Subsection (c) for
4 a period of two years;

5 (2) may not be placed on the list under Subsection (c)
6 for more than three two-year periods; and

7 (3) may not be placed on the list under Subsection (c)
8 if the person:

9 (A) has been convicted of or indicted for an
10 offense involving child abuse or neglect;

11 (B) has been determined by the department to have
12 engaged in child abuse or neglect; or

13 (C) is under investigation by the department for
14 child abuse or neglect.

15 (e) A person who serves as a public member of an expungement
16 review panel is a department volunteer for the purposes of Section
17 411.114, Government Code.

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

24 (g) Information and documents considered by an expungement
25 review panel are confidential, and a member of the panel may not
26 disclose any information or documents considered by the panel.

27 Sec. 261.604. REQUEST FOR REMOVAL OF NAME. (a) A person

1 who desires to have the person's name removed from the central
2 registry shall submit a written request to the commissioner that
3 includes a letter describing the reason for the request.

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

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

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

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

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

15 (d) If the expungement review panel denies a request under
16 this section after a hearing, the person may not submit a subsequent
17 request until the first anniversary of the date the review panel
18 rendered a decision on the person's last request. A person may not
19 make a request under this section for more than three hearings on a
20 single finding of child abuse or neglect within a 10-year period.

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

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

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

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

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

8 Sec. 261.605. HEARING DATE AND NOTICE; LIMITATION. (a) On
9 receipt of a request under Section 261.604(a), the commissioner
10 shall establish an expungement review panel under Section 261.603
11 and notify the panel of the request. The review panel shall set a
12 date for a hearing on the request. The review panel shall hold the
13 hearing not later than the 60th day after the date the commissioner
14 receives the request, unless the panel has good cause for holding
15 the hearing after that date.

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

19 (c) An expungement review panel may conduct a hearing by
20 telephone conference call, videoconference, or another similar
21 telecommunications method if the panel determines that the method
22 of appearance will facilitate the hearing.

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

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

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

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

7 (4) any other relevant evidence that shows changed
8 circumstances.

9 (b) The regional office of the department that conducted the
10 original investigation may:

11 (1) present evidence in support of or in opposition to
12 the request; and

13 (2) make a recommendation regarding the request.

14 Sec. 261.607. EXPUNGEMENT REVIEW PANEL'S DECISION. (a)
15 Not later than the 45th day after the date of the hearing, the
16 expungement review panel shall render a written decision on the
17 request that includes the review panel's reasons for the decision.
18 The review panel's decision must be by majority vote.

19 (b) The expungement review panel shall provide the written
20 decision to the person requesting the review and to the
21 department's commissioner, deputy commissioner, chief of staff,
22 and associate commissioner for child protective investigations.

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

25 (1) the nature and severity of the allegations of
26 abuse or neglect and the circumstances surrounding the allegations;

27 (2) the number of findings of abuse or neglect

1 involving the person;

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

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

7 (5) actions taken by the person since the incident to
8 prevent the reoccurrence of abuse or neglect, including
9 participation in and completion of services and programs related to
10 the allegations; and

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

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

16 Sec. 261.609. CONFIDENTIALITY. A review conducted under
17 this subchapter, including documents presented to and considered by
18 the expungement review panel, is confidential and not subject to
19 disclosure under Chapter 552, Government Code.

20 Sec. 261.610. RULEMAKING. The commissioner may adopt rules
21 to implement this subchapter.

22 SECTION 6. Section 261.3081, Family Code, as added by this
23 Act, applies only to a finding of abuse or neglect made by the
24 Department of Family and Protective Services on or after the
25 effective date of this Act.

26 SECTION 7. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2023.