

BILL ANALYSIS

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S.B. 1196
By: Birdwell
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, when an individual is investigated by Child Protective Investigations under the Department of Family and Protective Services (DFPS) for allegations of child abuse or neglect, the initial investigating caseworker can make one of five determinations. They can determine the report of abuse or neglect to be ruled out, unable to determine, unable to complete, 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. Their 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. 1196 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. 1196 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Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 1 (Section 261.002, Family Code) of this bill.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) of this bill

Rulemaking authority is expressly granted to the Department of Family and Protective Services in SECTION 2 (Section 261.0023, 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), (b-1), (e), and (f), 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 this section unless a final order issued by the State Office of Administrative Hearings (SOAH) after an administrative hearing or by a court in a civil proceeding, including a proceeding under Subchapter C (Adversary Hearing) or F (Family Preservation Services Pilot Program), Chapter 262 (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child), or Section 264.203 (Required Participation), includes a finding that the individual abused or neglected a child.

(a-2) Authorizes DFPS to add an individual's name to the central registry maintained under Section 261.002 (Central Registry) without a final order that includes a finding that the individual abused or neglected a child if DFPS determines that:

(1) the individual abandoned the child without identification or a means for identifying the child;

(2) a child of the individual is a victim of serious bodily injury or sexual abuse inflicted by the individual or by another person with the individual's consent;

(3) the individual has engaged in conduct against a child that would constitute an offense under certain provisions of the Penal Code;

(4) the individual voluntarily left the child alone or in the possession of another person not the parent of the child for at least six months without expressing an intent to return and without providing adequate support for the child;

(5) the individual has been convicted for certain offenses; or

(6) the individual is required under any state or federal law to register with a sex offender registry.

(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 (HHSC) to adopt rules necessary to carry out this section. Deletes existing text requiring that the rules prohibit DFPS from making a finding of abuse or neglect against a person in certain cases. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Requires DFPS to:

(1) remove an individual'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 is overturned in:

(A) an administrative review of DFPS's determination or an appeal of the review conducted under Section 261.309(c) (relating to authorizing a person who is alleged to have abused or neglected a child, if the person disputes DFPS's determination, to request an administrative review of the findings);

- (B) a review of DFPS's determination or an appeal of the review conducted by the office of consumer affairs of DFPS under DFPS rules;
- (C) makes no changes to this subsection;
- (D) an internal DFPS review of DFPS's determination conducted under Section 261.0023 while an administrative hearing is pending; or
- (E) an order by a county court at law, an associate judge under Section 201.201 (Authority of Presiding Judge), a district court, a court of appeals, or the supreme court; and

(2) update any relevant DFPS files to reflect an overturned finding of abuse or neglect against an individual not later than the 10th business day after the date the finding is overturned in a review, hearing, or appeal described by Subdivision (1).

Deletes existing text requiring that the rules to require DFPS to remove 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 person is overturned in certain cases and to update any relevant DFPS files to reflect an overturned finding of abuse or neglect against 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 (3). Makes nonsubstantive changes.

- (e) Provides that this section does not limit the ability of HHSC to access DFPS's records of reports of child abuse or neglect to conduct a background check under Section 42.056 (Required Background and Criminal History Checks; Criminal Penalties), Human Resources Code, or HHSC rules.
- (f) Requires the commissioner of DFPS (commissioner) 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 Sections 261.0021, 261.0022, and 261.0023, as follows:

Sec. 261.0021. NOTICE BEFORE NAME OF INDIVIDUAL ADDED TO CENTRAL REGISTRY. (a) Requires DFPS, if DFPS determines that an individual has abused or neglected a child, not later than the 10th day after the date the determination is made, to provide written notice to the individual of DFPS's prospective addition of the individual's name 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 obtain employment or certain licenses and 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 through certain procedures.

- (b) Prohibits DFPS from adding an individual's name to the central registry before the 31st day after the date DFPS provides notice to the individual under this section, if the individual requests a hearing under Section 261.0022, before the conclusion of the hearing process, or if DFPS's determination that the individual

abused or neglected a child is overturned by a process available to the individual and listed under Subsection (a)(3).

Sec. 261.0022. HEARING CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Authorizes an individual, not later than the 30th day after the date the individual receives notice under Section 261.0021, to request a hearing with SOAH to review the finding of abuse and neglect.

(b) Requires DFPS, if an individual requests a hearing under this section, to refer the individual's case to SOAH to hold the hearing.

(c) Requires an administrative law judge of SOAH to conduct a hearing for a request under this section in accordance with Chapter 2001 (Administrative Procedure), Government Code, make findings of fact and conclusions of law, and issue an order containing a final decision regarding the abuse and neglect findings.

(d) Requires that notice of the administrative law judge's order given to the individual under Chapter 2001, Government Code, include a statement of the individual's right to judicial review of the order.

(e) Requires DFPS, not later than the 10th day after the date an order by an administrative law judge affirming DFPS' determination becomes final under Section 2001.144 (Decisions or Orders; When Final), Government Code, to add the individual's name to the central registry.

(f) Provides that, if the individual seeks judicial review of the administrative law judge's order, the order remains in effect during the pendency of that appeal.

(g) Prohibits an individual from receiving a hearing under this section if the finding of abuse or neglect by the individual is made under certain sections of the Family Code, or by a district or appellate court.

Sec. 261.0023. INTERNAL DEPARTMENT REVIEW. (a) Requires DFPS, if an individual requests a hearing under Section 261.0022, to conduct an internal DFPS review of the findings while the administrative hearing is pending.

(b) Requires DFPS by rule to establish a process for conducting an internal DFPS review of a finding of abuse or neglect of a child before the date of the administrative hearing.

(c) Requires DFPS, if DFPS determines in an internal DFPS review that the evidence does not support a finding of abuse or neglect by a preponderance of the evidence, not later than the 10th day after the date DFPS makes the determination, to notify the individual of the results of the review, to remove the case from the SOAH docket, and is prohibited from adding the individual's name to the central registry.

(d) Requires DFPS, if DFPS determines in an internal DFPS review that the evidence supports a finding of abuse or neglect by a preponderance of the evidence, not later than the 10th day after making the determination, to notify the individual of the results of the review and that the individual's case will remain on the SOAH docket.

(e) Provides that information and materials used or referred to in an internal DFPS review under this section, including case records or other documents, are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

SECTION 3. Amends Section 261.005, Family Code,

Sec. 261.005. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION.

(a) Creates this subsection from existing text and makes no further changes.

(b) Provides that this section does not apply to Section 261.002(e).

SECTION 4. Amends Section 262.201, Family Code, by adding Subsection (h-1), as follows:

(h-1) Requires that a temporary order issued under Subsection (h) (relating to requiring the court, in certain suits, to issue an appropriate temporary order) include, with regard to each parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child, a determination by a preponderance of the evidence whether that individual engaged in conduct that would constitute abuse or neglect under Section 261.001 and, for an individual determined by the court to have engaged in conduct that constitutes child abuse or neglect, a finding listing the specific provisions of Section 261.001 applicable to the individual's conduct.

SECTION 5. Amends Section 262.406, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the court, except as provided by Subsection (d) (relating to authorizing the court to order that family preservation services not be provided in certain circumstances), at the conclusion of the hearing in a suit filed under Section 262.404 (Filing Suit; Petition Requirements), to order DFPS to provide family preservation services and to execute a family preservation services plan developed in collaboration with the family of the child who is a candidate for foster care if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) as to each parent, managing conservator, guardian, or other member of the child's household:

(A) the individual engaged in conduct that would constitute abuse or neglect under Section 261.001;

(B) the individual's acts or omissions present an immediate risk of abuse or neglect to the child; or

(C) there is a continuing danger to the child's physical health or safety caused by an act or failure to act of the individual; and

(2)-(3) makes no changes to these subdivisions.

Deletes existing text requiring the court, except as provided by Subsection (d), at the conclusion of the hearing in a suit filed under Section 262.404, to order DFPS to provide family preservation services and to execute a family preservation services plan developed in collaboration with the family of the child who is a candidate for foster care if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that abuse or neglect occurred or there is a substantial risk of abuse or neglect or continuing danger to the child's physical health or safety caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household.

(a-1) Requires the court, if the court makes a finding under Subsection (a)(1)(A), to identify the specific parts of Section 261.001 that apply to the parent's, managing conservator's, guardian's, or other member of the child's household's conduct.

SECTION 6. Amends Section 264.203, Family Code, by amending Subsection (m) and adding Subsection (m-1), as follows:

(m) Requires the court, at the conclusion of the hearing, to deny the petition unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) as to each parent, managing conservator, guardian, or other member of the child's household:

(A) the individual engaged in conduct that would constitute abuse or neglect under Section 261.001;

(B) the individual's acts or omissions present an immediate risk of abuse or neglect to the child; or

(C) there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the individual; and

(2) services are necessary to ensure the physical health or safety of the child.

Deletes existing text requiring the court, at the conclusion of the hearing, to deny the petition unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that abuse or neglect has occurred or there is a substantial risk of abuse or neglect or continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household.

(m-1) Requires the court, if the court makes a finding under Subsection (m)(1)(A), to identify the specific parts of Section 261.001 that apply to the parent's, managing conservator's, guardian's, or other member of the child's household's conduct.

SECTION 7. (a) Requires the commissioner to adopt the rules necessary to implement the changes in law made by this Act.

(b) Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2025.