

- SUBJECT:** Enhanced penalty for concealing child abuse
- COMMITTEE:** Human Services — favorable, without amendment
- VOTE:** 9 ayes — Raymond, N. Gonzalez, Fallon, Klick, Naishtat, Rose, Sanford, Scott Turner, Zerwas
- 0 nays
- WITNESSES:** For — Diana Martinez, TexProtects, Texas Association for the Protection of Children; (*Registered, but did not testify:* Lon Craft, TMPA; Michelle Dooley, Albert Metz, Heiwa Salovitz, Joe Tate and Sarah Watkins, Community Now; Stephanie LeBleu, Texas CASA; Susan Milam, National Association of Social Workers/Texas Chapter)
- Against — None
- On — (*Registered, but did not testify:* Elizabeth "Liz" Kromrei, Department of Family and Protective Services)
- BACKGROUND:** Family Code, sec. 261.101 requires professionals who suspect a child has been or may be abused or neglected or has died of abuse or neglect to personally report their suspicions within 48 hours. Reports must be made to a state or local law enforcement agency, the Department of Family and Protective Services, or the state agency in charge of the facility in which the suspected abuse or neglect occurred.
- "Professionals" are defined as those licensed or certified by the state or who are employees of a facility licensed, certified, or operated by the state and who have direct contact with children in the normal course of their official duties. This includes teachers, nurses, doctors, day-care employees, employees of a health care facility that provides reproductive services, juvenile probation officers, and juvenile detention officers.
- Under Family Code, sec. 261.107, it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to knowingly make a false report of child abuse. Under sec. 261.109, it is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to knowingly fail to report suspected child abuse.

DIGEST: HB 1205 would elevate to a state jail felony the penalty for a professional who knowingly failed to report child abuse or neglect with the intent to conceal the abuse or neglect.

SUPPORTERS SAY: HB 1205 would make the punishment fit the seriousness of the crime when a professional failed to report child abuse with the intent to conceal it.

Recent cases, such as the 2011 Penn State University sexual abuse scandal, show the severe harm that results from covering up child abuse. This bill would rightly recognize that concealing child abuse could have an even more devastating effect on children than knowingly not reporting it and warrants increased penalties.

The enhanced punishment in HB 1205 would serve as a deterrent. Professionals may feel direct or indirect pressure to protect the reputation of their workplace, institution, or profession and may be inclined to prevent incidents of abuse from coming to light. Making this action a felony would reduce the likelihood of concealment.

Currently, falsely reporting child abuse carries a penalty greater than intentionally not reporting it, even though covering up abuse is much more likely to endanger children. Enhancing the punishment for failure to report would bring parity to these penalties.

HB 1205 would have no significant impact to the state's correctional agency resources. According to the Department of Public Safety, between 2006 and 2011 there was an average of six convictions per year among both professionals and non-professionals for failing to report child abuse. Increasing the penalty for a professional who concealed child abuse would send a clear signal about the seriousness of these crimes and encourage prosecutors to more aggressively pursue them.

OPPONENTS SAY: HB 1205 would be an unnecessary and counterproductive expansion of prosecutorial discretion for symbolic effect only.

Under current law, professionals who fail to report child abuse are prosecuted. Despite recent high-profile cases, professionals seldom fail to report child abuse and virtually never intend to conceal the abuse or neglect. There is no evidence that enhancing the penalty for concealing

abuse would increase prosecutions, nor that prosecutors do not already prioritize reports of suspected child abuse. For example, following the Penn State scandal, arrests in Texas for failing to report child abuse increased to 42 in 2012 from an average of 22 between 2005 and 2011, an indication that prosecutors have responded to a possible increase in the reporting of cases of child abuse.

Current law also adequately punishes professionals who fail to report child abuse. Knowingly failing to report child abuse was raised to a class A misdemeanor in 2009 from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). Filing a false report of child abuse is a separate offense, and its enhancement to a state jail felony in 2005 should not affect the determination of the proper penalty for intending to conceal child abuse.

By making intent to conceal child abuse a felony, HB 1205 could cause professionals to stop using their discretion, even in cases that were nuanced and required difficult judgment calls to balance a child's welfare with preserving relationships with the child and his or her caregivers.

HB 1205's vague language would risk imposing unfairly severe sentences. The bill would not define "intended to conceal," and therefore would increase the possibility that professionals could be prosecuted for concealment that did not interfere with an investigation.

By contrast, increasing training for professionals and non-professionals to identify and report child abuse and neglect would improve child safety without risking prosecutorial overreach.

**OTHER
OPPONENTS
SAY:**

While well intentioned, HB 1205 might not be used by prosecutors to pursue those who concealed child abuse. Because the terms "intended to conceal the abuse and neglect" would be undefined and vague, prosecutors might not risk an acquittal by trying to prove such a case and could instead fall back on the current class A misdemeanor for failing to report abuse and neglect.