

SUBJECT: Modifying mandatory reporting standards for child abuse or neglect

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Frank, Hull, Klick, Neave, Noble, Shaheen

3 nays — Hinojosa, Meza, Rose

WITNESSES: For — Meagan Corser, Texas Home School Coalition; Darrin Bickham;
(*Registered, but did not testify*: Andrew Brown, Texas Public Policy
Foundation; Thomas Parkinson)

Against — (*Registered, but did not testify*: Alison Mohr Boleware,
National Association of Social Workers - Texas Chapter; Sarah Crockett,
Texas CASA)

On — (*Registered, but did not testify*: Stephen Black, Department of
Family and Protective Services; Troy Alexander, Texas Medical
Association)

BACKGROUND: Family Code ch. 261, subch. B governs mandatory reporting of child
abuse or neglect. Sec. 261.101 contains provisions establishing who is
required to report and the standard and time frame under which a report
must be made. Under this section, a person or professional having cause to
believe that reportable conduct has occurred must make a report to the
appropriate agency.

Sec. 261.109 establishes the offense of failure to report child abuse or
neglect and the penalties associated with the offense. A person or
professional commits the offense if they are required to make a report
under sec. 261.101 and knowingly fail to do so. Failure to report is a class
A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000)
unless certain factors are shown on the trial of the offense making it a
state-jail felony (180 days to two years in a state jail and an optional fine
of up to \$10,000).

DIGEST: CSHB 3379 would modify the standard under which a person or professional must report child abuse or neglect. Under the bill, a person or professional with reasonable cause to believe that reportable conduct had occurred would be required to make a report.

Persons or professionals who, with due diligence and in good faith, timely determined whether they were required to make a report in accordance with the modified standard and who reasonably determined that they lacked reasonable cause to make the report would not commit the offense of failure to report. The bill would not require a person or professional to act with due diligence to determine whether a report must be made.

The bill would take effect September 1, 2021, and would apply only to a report of suspected abuse or neglect of a child that was made on or after that date.

SUPPORTERS SAY: CSHB 3379 would help address issues associated with the overly broad standard for mandatory reporting of suspected child abuse or neglect by changing the reporting standard so that a person had a duty to report only if there was reasonable cause to believe that reportable conduct had occurred.

The current standard, which is having any cause to believe that reportable conduct has occurred, is not explicitly defined in statute or case law and provides little guidance for a person who is required to report child abuse or neglect. This can lead to frivolous or false reports, sometimes based solely on rumors or hearsay. In addition, the overly broad reporting standard could lead to a person being criminally charged for false reporting if they did not submit an initial report due to lack of reasonable cause to make the report after doing their due diligence in a timely manner and with good faith. "Cause to believe" can have different meanings for different individuals, and CSHB 3379 would provide the needed clarification for this ambiguous standard and the assurance that a reasonable decision not to report based on due diligence and good faith would not be criminalized.

The reporting that the current standard encourages can be unnecessarily burdensome on the Department of Family and Protective Services (DFPS) and on law enforcement, as they must process and investigate every report of potential child abuse or neglect even if that report may be false or frivolous. False or frivolous reporting caused by attempts to avoid criminal liability can lead to children being removed from their families unnecessarily, which can be traumatic for children and families and should be avoided if at all possible. The clarification provided by CSHB 3379 would strike the balance needed to incentivize mandatory reporters to investigate potential child abuse and neglect with due diligence while discouraging over reporting due to fear of criminal prosecution.

CRITICS
SAY:

CSHB 3379 would introduce a new standard for the mandatory reporting of child abuse and neglect, which could unnecessarily confuse professional mandatory reporters who are already trained on how to appropriately handle reporting under the current statute. Changes made by the bill could hamper the ability of these professionals to report suspected abuse or neglect that they otherwise would have reported.

One of the most important factors for encouraging victims of reportable incidents to come forward is assuring victims that they will be believed by the person with whom they choose to share the information. The bill's "reasonable cause" standard could promote a heightened standard of scrutiny by reporters into an alleged incident, potentially causing victims who choose to share incidents of abuse or neglect with a mandatory reporter to feel disbelieved and exacerbating the trauma that they likely would already be experiencing.