

BILL ANALYSIS

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C.S.H.B. 249
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is no uniform definition in statute for "abuse" and "neglect" within the Department of Family and Protective Services (DFPS). The Child Protective Services (CPS) division has a comprehensive definition for both terms; however, this definition is not utilized across DFPS as a whole. The Child Care Licensing (CCL) division also has a definition of abuse and neglect, but it is not as thorough as CPS's definition. This means that what may constitute abuse or neglect under the CPS definition may not necessarily be classified as such in a CCL investigation, allowing certain instances of potential "abuse" or "neglect" to go unreported. The investigation of alleged abuse and neglect at daycares and residential child care operations is only a portion of what CCL is responsible for. CCL is also tasked with the maintenance of minimum standards, regulations, and facility compliance of these operations. As such, the training they receive regarding investigations of abuse and neglect is not as thorough as the training required for CPS officers. With the pending transition of CCL to the Health and Human Services Commission, interested parties believe that it is in the best interest of the child to keep the investigations of abuse and neglect at DFPS and transfer the investigative authority to CPS. H.B. 249 makes the definition for "abuse" and "neglect" the same across DFPS. The bill also gives CPS the authority to investigate cases of alleged abuse and neglect that occur at a child-care facility, and ensures that this function cannot be transferred. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 249 amends current law relating to investigations of child abuse, neglect, or exploitation and to child protective services functions of the Department of Family and Protective Services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Family and Protective Services (DFPS) in SECTION 8 (Section 40.039, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission or the commissioner of DFPS in SECTION 8 (Section 40.042, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 71.004, Family Code, to redefine "family violence."

SECTION 2. Amends Section 261.001, Family Code, by amending Subdivisions (1), (4), and (5) and adding Subdivision (3), to redefine "abuse," "neglect," and "person responsible for a child's care custody or welfare" and define "exploitation."

SECTION 3. Amends Section 261.101(b), Family Code, to require a professional, if the professional has cause to believe that certain circumstances exist, including the professional having cause to believe that a child has been abused as defined by Section 261.001 (Definitions), rather than Section 261.001 or Section 261.401 (Agency Investigation), to make a report not later than a certain period.

SECTION 4. Amends Sections 261.301(b) and (c), Family Code, as follows:

(b) Requires a state agency to investigate a report that alleges abuse, neglect, or exploitation, rather than a report that alleges abuse or neglect, occurred in certain facilities associated with the agency.

(c) Provides that the Department of Family and Protective Services (DFPS) is not required to investigate a report that alleges child abuse, neglect, or exploitation, rather than a report that alleges child abuse or neglect, by a person other than a person responsible for a child's care, custody, or welfare.

SECTION 5. Amends Section 261.401(b), Family Code, to create an exception under Section 531.02013(1)(D) (relating to the non-transferability of certain investigations, Government Code, and make a nonsubstantive change.

SECTION 6. Amends Sections 261.405(a) and (c), Family Code, as follows:

(a) Defines "abuse," "exploitation," and "neglect," notwithstanding Section 261.001, and makes nonsubstantive changes.

(c) Requires the Texas Juvenile Justice Department (TJJD) to make a prompt, thorough investigation, rather than conduct an investigation, as provided by this chapter (Investigation of Report of Child Abuse or Neglect) if TJJD receives a report of alleged abuse, neglect, or exploitation in certain programs or facilities. Requires that the primary purpose of the investigation be the protection of the child.

SECTION 7. Amends Section 531.02013, Government Code, to include investigations of alleged abuse, neglect, or exploitation occurring at a child-care facility, as that term is defined in Section 40.042, Human Resources Code, in the list of certain functions of DFPS that are not subject to transfer under certain provisions.

SECTION 8. (a) Amends Subchapter B, Chapter 40, Human Resources Code, by adding Sections 40.039, 40.040, 40.041, and 40.042, as follows:

Sec. 40.039. REVIEW OF RECORDS RETENTION POLICY. Requires DFPS to periodically review DFPS's records retention policy with respect to case and intake records relating to DFPS functions. Requires DFPS to make changes to the policy consistent with the records retention schedule submitted under Section 441.185 (Record Retention Schedules), Government Code, that are necessary to improve case prioritization and the routing of cases to the appropriate division of DFPS. Authorizes DFPS to adopt rules necessary to implement this section.

Sec. 40.040. CASE MANAGEMENT VENDOR QUALITY OVERSIGHT AND ASSURANCE DIVISION. (a) Defines "case management," "catchment area," and "community-based care."

(b) Requires DFPS to create within DFPS the case management services vendor quality oversight and assurance division (division). Requires the division to oversee quality and ensure accountability of any vendor that provides community-based care and full case management services for DFPS under community-based care and monitor the transfer from DFPS to a vendor of full case management services for children and families receiving services from the vendor, including any transfer occurring under a pilot program.

(c) Requires the Health and Human Services Commission (HHSC) to contract with an outside vendor with expertise in quality assurance to develop, in coordination with DFPS, a contract monitoring system and standards for the continuous monitoring of the adherence of a vendor providing foster care services under community-based care to the terms of the contract entered into by the vendor and HHSC. Requires that the standards include performance benchmarks relating to the provision for

case management services in the catchment area where the vendor operates.

(d) Requires the division to collect and analyze data comparing outcomes on performance measures between catchment areas where community-based care has been implemented and regions where community-based care has not been implemented.

Sec. 40.041. OFFICE OF DATA ANALYTICS. Requires DFPS to create an office of data analytics (ODA). Requires ODA to report to the deputy commissioner of DFPS and authorizes ODA to perform any of certain functions, as determined by DFPS.

Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND EXPLOITATION. (a) Defines "child-care facility."

(b) Requires DFPS, for all investigations of child abuse, neglect, or exploitation conducted by the child protective services division of DFPS (CPS), to adopt the definitions of abuse, neglect, and exploitation provided in Section 261.001, Family Code.

(c) Requires DFPS to establish standardized policies to be used during investigations.

(d) Requires the commissioner of DFPS (commissioner) to establish units within CPS to specialize in investigating allegations of child abuse, neglect, or exploitation occurring at a child-care facility.

(e) Authorizes DFPS to require that investigators who specialize in allegations of child abuse, neglect, and exploitation occurring at child-care facilities receive ongoing training on the minimum licensing standards for any facilities that are applicable to the investigator's specialization.

(f) Requires DFPS, after an investigation of abuse, neglect, or exploitation occurring at a child-care facility, to provide the state agency responsible for regulating the facility with access to any information relating to DFPS's investigation. Provides that providing access to confidential information under this subsection does not constitute a waiver of confidentiality.

(g) Authorizes the executive commissioner of HHSC (executive commissioner) or the commissioner, as appropriate, to adopt rules to implement this section.

(b) Requires the commissioner, as soon as possible after the effective date of this Act, to establish ODA analytics required by Section 40.041, Human Resources Code, as added by this section. Requires the commissioner and executive commissioner to transfer appropriate staff as necessary to conduct the duties of ODA.

SECTION 9. Amends Section 40.051, Human Resources Code, as follows:

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. Requires DFPS to also develop its departmental strategic plan based on:

(1) creates this subdivision from existing text and makes no further changes to this subdivision;

(2) the goal of ending the abuse and neglect of children in the conservatorship in DFPS; and

(3) the goal of increasing the capacity and availability of foster, relative, and kinship placements in this state.

SECTION 10. (a) Amends Section 40.058(f), Human Resources Code, as follows:

(f) Requires that a contract for residential child-care services provided by a general residential operation or by a child-placing agency include provisions that:

(1) enable DFPS and HHSC, rather than enable DFPS, to monitor the effectiveness of the services;

(2) specify performance outcomes, financial penalties for failing to meet any specified performance outcomes, and financial incentives for exceeding any specified performance outcomes, rather than specify performance outcomes;

(3) authorize DFPS or HHSC to terminate the contract or impose monetary sanctions, rather than authorize DFPS to terminate the contract or impose sanctions, for certain violations of the contract or for underperformance in meeting any specified performance outcomes;

(4) and (5) makes conforming changes.

(b) Requires HHSC to, in a contract for residential child-care services between HHSC and a general residential operation or child-placing agency that is entered into on or after the effective date of this section, including a renewal contract, include the provisions required by Section 40.058(f), Human Resources Code, as amended by this section.

(c) Requires HHSC to seek to amend contracts for residential child-care services entered into with general residential operations or child-placing agencies before the effective date of this section to include the provisions required by Section 40.058(f), Human Resources Code, as amended by this section.

(d) Prohibits DFPS and HHSC from imposing a financial penalty against a general residential operation or child-placing agency under a contract provision described by Section 40.058(f)(2) or (3), Human Resources Code, as amended by this section, until September 1, 2018.

SECTION 11. (a) Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.0581, as follows:

Sec. 40.0581. PERFORMANCE MEASURES FOR CERTAIN SERVICE PROVIDER CONTRACTS. (a) Requires HHSC, in collaboration with DFPS, to contract with a vendor or enter into an agreement with an institution of higher education to develop, in coordination with DFPS, performance quality metrics for family-based safety services and post-adoption support services providers. Requires that the quality metrics be included in each contract with those providers.

(b) Requires each provider whose contract with HHSC to provide DFPS services includes the quality metrics developed under Subsection (a) to prepare and submit to DFPS a report each calendar quarter regarding the provider's performance based on the quality metrics.

(c) Requires the commissioner to compile a summary of all reports prepared and submitted to DFPS by family-based safety services providers as required by Subsection (b) and distribute the summary to appropriate family-based safety services caseworkers and CPS region management once each calendar quarter.

(d) Requires the commissioner to compile a summary of all reports prepared and submitted to DFPS by post-adoption support services providers as required by Subsection (b) and distribute the summary to appropriate conservatorship and adoption caseworkers and CPS region management.

(e) Requires DFPS to make the summaries prepared under Subsections (c) and (d) available to families that are receiving family-based safety services and to adoptive families.

(f) Provides that this section does not apply to a provider that has entered into a contract with HHSC to provide family-based safety services under Section 264.165, Family Code.

(b) Requires that the quality metrics required by Section 40.0581, Human Resources Code, as added by this section, be developed not later than September 1, 2018, and included in any contract, including a renewal contract, entered into by HHSC with a family-based safety services provider or a post-adoption support services provider on or after January 1, 2019, except as provided by section 40.0581(f), Human Resources Code, as added by this section.

SECTION 12. Amends Section 42.002(23), Human Resources Code, to redefine "other maltreatment."

SECTION 13. Amends Section 42.044(c-1), Human Resources Code, to require DFPS to investigate a listed family home if DFPS receives a complaint alleging certain facts, including that a child in the home has been abused or neglected, as defined by Section 261.001, Family Code, rather than as defined by Section 261.401, Family Code.

SECTION 14. Repealer: Section 261.401(a) (relating to the definitions of "abuse," "exploitation," and "neglect"), Family Code.

SECTION 15. (a) Makes application of this Act prospective.

(b) Prohibits the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility, as that term is defined in Section 40.042, Human Resources Code, as added by this Act, notwithstanding any provision of Subchapter A-1 (Consolidation of Health and Human Services System), Chapter 531 (Health and Human Services Commission), Government Code, or any other law, from being transferred to HHSC and provides that responsibility for conducting certain investigations remains the responsibility of DFPS.

(c) Requires the commissioner, as soon as possible after the effective date of this Act, to transfer the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility, as that term is defined in Section 40.042, Human Resources Code, as added by this Act, to CPS. Requires the commissioner to transfer appropriate investigators and staff as necessary to implement this subsection.

(d) Requires DFPS to implement the standardized definitions and policies required under Sections 40.042(b) and (c), Human Resources Code, as added by this Act, not later than December 1, 2017.

SECTION 16. Effective date: September 1, 2017.