

BILL ANALYSIS

C.S.H.B. 4119
By: Hughes
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that statutory provisions relating to investigations of alleged child abuse and neglect and the maintenance of records related to those investigations fall short in providing procedural protections to ensure the accurate entry and maintenance of information in a central registry, the adequate review of findings, and the appropriate release of confidential information. C.S.H.B. 4119 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4119 amends the Family Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require the rules adopted by the executive commissioner of the Health and Human Services Commission to carry out statutory provisions relating to the central registry of reported cases of child abuse or neglect maintained by the Department of Family and Protective Services (DFPS) to provide for procedural protections for individuals reported to have committed child abuse or neglect. The bill requires DFPS, before adding to the central registry a record of a reported case of child abuse or neglect, to provide to the individual reported to have committed the abuse or neglect written notice that information regarding the reported case will be added to the registry, a copy of the record that will be added to the registry, and the opportunity to appeal DFPS's finding of abuse or neglect. The bill authorizes such an individual to appeal DFPS's finding of abuse or neglect to a district court in the county in which the individual resides. The bill authorizes the district court to sustain DFPS's finding of abuse or neglect only on the court's finding by clear and convincing evidence that the individual committed the abuse or neglect and entitles the individual to a jury trial. The bill prohibits DFPS from including in the central registry a record of a reported case of child abuse or neglect if DFPS's finding of abuse or neglect is not sustained by the district court's finding of abuse or neglect. The bill requires DFPS or another entity to whom a report of child abuse or neglect is made to maintain each report of child abuse or neglect until the second anniversary of the date DFPS or the other entity receives the report.

C.S.H.B. 4119 removes the court's discretion to authorize the disclosure of confidential information relating to the investigation of a report of child abuse or neglect under certain conditions, including the filing of a motion with the court requesting the release, the service of notice of hearing on the investigating agency and all other interested parties, and a determination

by the court, after hearing and an in camera review of the requested information, that disclosure is not likely to endanger the life or safety of certain individuals and instead requires the court to order the disclosure of the confidential information under those conditions. The bill removes as a condition for such mandatory disclosure a determination by the court, after hearing and an in camera review of the requested information, that the disclosure of the requested information is essential to the administration of justice. The bill removes from the conditions under which a court is authorized, on its own motion, to order the disclosure of such confidential information that the court finds that disclosure of the information is essential to the administration of justice.

C.S.H.B. 4119 prohibits an investigation of a report of child abuse or neglect that includes an examination of the subject child or another child in the home from including a medical, psychological, or psychiatric examination of the child unless the child's parent, conservator, or legal guardian consents in writing to the examination or DFPS obtains a court order for the medical, psychological, or psychiatric examination. The bill authorizes a DFPS investigator, if during the investigation the investigator believes that a child needs emergency medical attention before a representative of a law enforcement agency is able to arrive, to obtain medical assistance for the child from emergency medical services personnel. The bill establishes that statutory provisions relating to the conduct of an investigation do not limit the authority of a law enforcement agency to perform its duties under any other law.

C.S.H.B. 4119 makes a statutory provision creating an offense relating to a person who attempts to interfere with a DFPS investigation during the transport of a child applicable only when DFPS has taken possession of a child in an emergency without a court order or is conducting an ongoing court-ordered investigation or when the child's parent, conservator, or legal guardian has consented to the transport.

C.S.H.B. 4119 requires DFPS to make a record of each interview conducted in the investigation of a report of abuse or neglect and to maintain those records and all other documents, including original notes, relating to the investigation. The bill includes a list of the specific allegations of child abuse and neglect being investigated, including the date and a detailed description of each allegation, among the information required to be included in the summary DFPS is required to provide to a parent or other person having legal custody of a child who is being investigated by DFPS. The bill requires the proposed child placement resources form required to be provided to a parent or other person having legal custody of a child who is being investigated by DFPS, if it is determined that a removal of the child may be warranted, to instruct the parent or other person having legal custody of the child to identify in the form three individuals who reside in Texas within 100 miles of the child's primary residence and who could serve as relative caregivers or designated caregivers before a suit affecting the parent-child relationship is filed and until the suit is dismissed.

C.S.H.B. 4119 requires the immediate supervisor of the DFPS employee who conducted a child abuse or neglect investigation or against whom a complaint was filed, at the conclusion of the informal review to clarify the investigated person's status or to resolve a complaint by the investigated person, to submit a summary of the person's case or complaint and the supervisor's findings relating to the person's case or complaint. The bill requires DFPS, not later than the 20th day after the date the supervisor submits the summary and findings, to make the written summary and findings available to the person under investigation. The bill requires DFPS, not later than the 30th day before the date of an administrative review of the findings of an investigation of a report of child abuse or neglect, to provide a copy of the file to the person requesting the review.

C.S.H.B. 4119 requires the person conducting the administrative review for DFPS to allow the person challenging the findings, at the review, to bring witnesses, submit evidence, and question the investigative workers and immediate supervisors who developed DFPS's findings. The bill authorizes DFPS to postpone the administrative review for not more than 30 days to ensure attendance of witnesses, necessary investigative workers, and immediate supervisors. The bill

requires DFPS to make an audio recording of the administrative review, to preserve the recording until the first anniversary of the date the administrative review concludes, and to make the audio recording available to any party involved in the review not later than the 10th day after the date the person requests access to the recording. The bill requires DFPS to conduct a review postponed because of a pending civil court proceeding initiated by DFPS, a criminal court proceeding, or an ongoing criminal investigation not later than the 45th day after the date the court proceeding or investigation is completed. The bill establishes that a person under investigation for allegedly abusing or neglecting the person's child is not subject to and may not be required to submit to the jurisdiction of the State Office of Administrative Hearings in any proceeding in connection to the alleged abuse or neglect.

C.S.H.B. 4119 changes the period for which evidence in an investigation of suspected child abuse or neglect is required to be preserved from one year to the second anniversary of the later of the date the evidence is created or the date of a final judgment in a reported case for which the evidence is created and includes among the evidence that must be preserved audio recordings of the intake telephone calls, e-mails, and other recordings.

C.S.H.B. 4119 repeals Section 261.302(c), Family Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4119 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate differences relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

INTRODUCED

SECTION 1. Section 261.002, Family Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) The department may adopt rules necessary to carry out this section. The rules shall provide for:

(1) procedural protections for individuals reported to have committed abuse or neglect;

(2) cooperation with local child service agencies, including hospitals, clinics, and schools;[;] and

(3) cooperation with other states in exchanging reports to effect a national registration system.

(d) Before the department may add to the central registry a record of a reported case

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 261.002(b), Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(b) The executive commissioner may adopt rules necessary to carry out this section. The rules shall provide for:

(1) procedural protections for individuals reported to have committed abuse or neglect;

(2) cooperation with local child service agencies, including hospitals, clinics, and schools;[;] and

(3) cooperation with other states in exchanging reports to effect a national registration system.

SECTION 2. Section 261.002, Family Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Before the department may add to the central registry a record of a reported case

of child abuse or neglect, the department must provide to the individual reported to have committed the abuse or neglect:

(1) written notice that information regarding the reported case will be added to the registry;

(2) a copy of the record that will be added to the registry; and

(3) the opportunity to appeal the department's finding of abuse or neglect as provided by Subsection (e).

(e) An individual described by Subsection (d) may appeal the department's finding of abuse or neglect by requesting a hearing conducted by the State Office of Administrative Hearings. An appeal under this subsection is a contested case under Chapter 2001, Government Code. The department may not include in the central registry a record of a reported case of child abuse or neglect if the department's finding of abuse or neglect is not sustained by an administrative law judge following a hearing under this section.

SECTION 2. Section 261.103, Family Code, is amended.

SECTION 3. Sections 261.201(b) and (c), Family Code, are amended.

SECTION 4. Section 261.302, Family Code, is amended.

SECTION 5. Section 261.3021, Family Code, is amended.

SECTION 6. Section 261.307(a), Family Code, is amended.

SECTION 7. Section 261.309, Family Code, is amended.

SECTION 8. Section 261.310(d), Family Code, is amended.

84R 26596

Substitute Document Number: 84R 21124

of child abuse or neglect, the department must provide to the individual reported to have committed the abuse or neglect:

(1) written notice that information regarding the reported case will be added to the registry;

(2) a copy of the record that will be added to the registry; and

(3) the opportunity to appeal the department's finding of abuse or neglect through the department's administrative remedies and as provided by Subsection (e).

(e) An individual described by Subsection (d) may appeal the department's finding of abuse or neglect to a district court in the county in which the individual resides. The district court may sustain the department's finding of abuse or neglect only on the court's finding by clear and convincing evidence that the individual committed the abuse or neglect. The individual is entitled to a jury trial. The department may not include in the central registry a record of a reported case of child abuse or neglect if the department's finding of abuse or neglect is not sustained by the district court's finding of abuse or neglect.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

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SECTION 9. Section 261.302(c), Family Code, is repealed.

SECTION 10. Same as introduced version.

SECTION 10. The changes in law made by this Act apply only to an investigation of a report of child abuse or neglect that is made, or a suit affecting the parent-child relationship that is commenced, on or after the effective date of this Act. A report that is made or a suit that is commenced before the effective date of this Act is governed by the law in effect on the date the report was made or the suit was commenced, and the former law is continued in effect for that purpose.

SECTION 11. Same as introduced version.

SECTION 11. This Act takes effect September 1, 2015.

SECTION 12. Same as introduced version.