

## **BILL ANALYSIS**

C.S.H.B. 249  
By: Hernandez  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have expressed a need for uniform standards with regard to investigations of alleged abuse, neglect, and exploitation of a child, particularly with regard to investigations of such allegations occurring at certain facilities providing child-care services. C.S.H.B. 249 seeks to provide for this uniformity, including through the adoption of a single definition of "abuse," "neglect," and "exploitation" for purposes of conducting such investigations.

### **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 rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 5 of this bill.

### **ANALYSIS**

C.S.H.B. 249 repeals Family Code provisions requiring a state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or that provides oversight of a program that serves children to investigate a report that a child has been or may be abused, neglected, or exploited in the facility or program and defining "abuse," "neglect," and "exploitation" for purposes of that requirement.

C.S.H.B. 249 amends the Family Code to replace the requirement that a state agency investigate a report that alleges abuse or neglect occurred in a facility operated, licensed, certified, or registered by that agency with a requirement that the Department of Family and Protective Services (DFPS) investigate a report that alleges abuse, neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by a state agency. The bill provides for the meaning of "exploitation" for these purposes and includes a report alleging child exploitation by a person among those reports that DFPS is not required to investigate except as otherwise provided by related law and the bill's provisions and specifies that the reports an appropriate state or local law enforcement agency is required to investigate if the agency determines an investigation should be conducted are other reports of child abuse, neglect, or exploitation. The bill includes among the persons considered a person responsible for a child's care, custody, or welfare for purposes of investigating a report of child abuse or neglect an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility.

C.S.H.B. 249 amends the Government Code to include investigations of alleged abuse, neglect, or exploitation occurring at certain child-care facilities among the functions of DFPS that are not

subject to transfer under the health and human services system consolidation.

C.S.H.B. 249 amends the Human Resources Code to require DFPS, for all investigations of child abuse, neglect, or exploitation conducted by the child protective services division of DFPS, to adopt the definitions of abuse, neglect, and exploitation provided in Family Code provisions relating to investigations of reports of child abuse or neglect. The bill requires DFPS to establish standardized policies to be used during investigations and requires the commissioner of DFPS to establish units within the child protective services division of DFPS to specialize in investigating allegations of child abuse, neglect, or exploitation occurring at certain child-care facilities. The bill authorizes DFPS to require that such investigators receive ongoing training on the minimum licensing standards for any facilities that are applicable to the investigator's specialization. The bill 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 the investigation and establishes that providing access to confidential information to the agency does not constitute a waiver of confidentiality. The bill authorizes the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules to implement these provisions.

C.S.H.B. 249 prohibits the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility from being transferred to HHSC and establishes that such responsibility remains that of DFPS. The bill requires the commissioner of DFPS to transfer the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility to the child protective services division of DFPS and to transfer appropriate investigators and staff as necessary to implement that transfer of responsibility. The bill requires DFPS to implement the standardized definitions and policies required by the bill not later than December 1, 2017.

C.S.H.B. 249 repeals Sections 261.401(a) and (b), Family Code.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 249 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.

#### **INTRODUCED**

No equivalent provision.

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 261.001, Family Code, is amended by adding Subdivision (3) and amending Subdivision (5) to read as follows:

(3) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

- (A) a parent, guardian, managing or possessory conservator, or foster parent of the child;
- (B) a member of the child's family or household as defined by Chapter 71;
- (C) a person with whom the child's parent cohabits;
- (D) school personnel or a volunteer at the child's school; ~~[or]~~
- (E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or
- (F) an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.

SECTION 1. Section 261.101(b), Family Code, is amended.

No equivalent provision.

SECTION 2. Same as introduced version.

SECTION 3. Sections 261.301(b), (c), (f), and (h), Family Code, are amended to read as follows:

(b) The department ~~[A state agency]~~ shall investigate a report that alleges abuse, ~~[or]~~ neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by a state ~~[that]~~ agency, ~~[as provided by Subchapter E. In conducting an investigation for]~~ including a facility operated, licensed, certified, registered, or listed by the department, ~~[the department shall perform the investigation]~~ as provided by:

- (1) Subchapter E; and
- (2) the Human Resources Code.

(c) The department is not required to investigate a report that alleges child abuse, ~~[or]~~ neglect, or exploitation by a person except as provided by Subsections (a) and (b) ~~[other than a person responsible for a child's care, custody, or welfare]~~. The appropriate state or local law enforcement agency shall investigate other reports of child abuse, neglect, or exploitation ~~[that report]~~ if the agency determines an investigation should be conducted.

(f) An investigation of a report to the department that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an

immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child shall be conducted jointly by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, from the appropriate local law enforcement agency and the department [~~or the agency responsible for conducting an investigation under Subchapter E~~].

(h) The department and the appropriate local law enforcement agency shall conduct an investigation[~~, other than an investigation under Subchapter E,~~] as provided by this section and Article 2.27, Code of Criminal Procedure, if the investigation is of a report that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child. Immediately on receipt of a report described by this subsection, the department shall notify the appropriate local law enforcement agency of the report.

No equivalent provision.

SECTION 4. Section 531.02013, Government Code, is amended to read as follows:

Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN AGENCIES. The following functions are not subject to transfer under Sections 531.0201 and 531.02011:

(1) the functions of the Department of Family and Protective Services, including the statewide intake of reports and other information, related to the following:

(A) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(B) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(i) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(ii) by a provider that has contracted to provide home and community-based services; ~~and~~

(C) prevention and early intervention services; and

(D) 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; and  
(2) the public health functions of the Department of State Health Services, including health care data collection and maintenance of the Texas Health Care Information Collection program.

No equivalent provision.

SECTION 5. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.042 to read as follows:

Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND EXPLOITATION. (a) In this section, "child-care facility" includes a facility, licensed or unlicensed child-care facility, family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42.

(b) For all investigations of child abuse, neglect, or exploitation conducted by the child protective services division of the department, the department shall adopt the definitions of abuse, neglect, and exploitation provided in Section 261.001, Family Code.

(c) The department shall establish standardized policies to be used during investigations.

(d) The commissioner may establish units within the child protective services division of the department to specialize in investigating allegations of child abuse, neglect, or exploitation occurring at a child-care facility.

(e) The department may 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) After an investigation of abuse, neglect, or exploitation occurring at a child-care facility, the department shall provide the state agency responsible for regulating the facility with access to any information relating to the department's investigation. Providing access to confidential information under this subsection does not constitute a waiver of confidentiality.

(g) The executive commissioner may adopt rules to implement this section.

SECTION 2. Section 261.401(a), Family Code, is amended to read as follows:

SECTION 8. Sections 261.401(a) and (b), Family Code, are repealed.

(a) ~~In [Notwithstanding Section 261.001, in] this section, "exploitation" [:~~

~~[(1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.~~

~~[(2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.~~

~~[(3) "Neglect" means a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.]~~

SECTION 3. Section 42.002(23), Human Resources Code, is amended.

SECTION 4. Section 42.044(c-1), Human Resources Code, is amended.

SECTION 5. (a) The changes in law made by this Act apply only to a report of suspected abuse or neglect of a child that is made on or after the effective date of this Act. A report of suspected abuse or neglect that is made before that date is governed by the law in effect on the date the report was made, and that law is continued in effect for that purpose.

(b) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before that date is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 9. (a) The changes in law made by this Act apply only to a report of suspected abuse, neglect, or exploitation of a child that is made on or after the effective date of this Act. A report of suspected abuse, neglect, or exploitation that is made before that date is governed by the law in effect on the date the report was made, and that law is continued in effect for that purpose.

(b) Notwithstanding any provision of Subchapter A-1, Chapter 531, Government Code, or any other law, 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, may not be transferred to the Health and Human Services Commission and remains the responsibility of the

before that date.

Department of Family and Protective Services.

(c) As soon as possible after the effective date of this Act, the commissioner of the Department of Family and Protective Services shall 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 the child protective services division of the department. The commissioner shall transfer appropriate investigators and staff as necessary to implement this subsection.

(d) The Department of Family and Protective Services shall 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 6. This Act takes effect September 1, 2017.

SECTION 10. Same as introduced version.