

## **BILL ANALYSIS**

Senate Research Center

H.B. 249  
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Health & Human Services  
5/11/2017  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

There is no uniform definition exists 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 as 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 HHSC, 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 the Department of Family and Protective Services. 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.

H.B. 249 amends current law relating to investigations of abuse, neglect, or exploitation conducted by the Department of Family and Protective Services.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 (Section 40.042, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

SECTION 2. 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 3. Amends Section 261.301, Family Code, by amending Subsections (b), (c), and (h) and adding Subsection (b-1), as follows:

(b) Requires a state agency, except as provided by Subsection (b-1), 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.

(b-1) Requires the Department of Family and Protective Services (DFPS) to investigate a report that alleges abuse, neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by the Health and Human Services Commission (HHSC), DFPS, or another health and human services agency listed in Section 531.001 (Definitions), Government Code. Requires DFPS to perform the investigation as provided by Subchapter E (Investigations of Abuse, Neglect, or Exploitation in Certain Facilities) and the Human Resources Code.

(c) Provides that 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 except as provided by Subsections (a) (relating to requiring DFPS to investigate certain allegations of child abuse or neglect) and (b), rather than by a person other than a person responsible for a child's care, custody, or welfare. Requires the appropriate state or local law enforcement agency to investigate other reports of child abuse, neglect, or exploitation, rather than investigate that report, if the agency determines an investigation should be conducted.

(h) Deletes existing text providing an exception to the requirement to conduct certain investigations for an investigation under Subchapter E.

SECTION 4. Amends Section 261.401(b), Family Code, to create an exception under Section 261.301 (Investigation of Report) and make a nonsubstantive change.

SECTION 4. 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 6. 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 7. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.042, as follows:

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) Authorizes 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 relation 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 to adopt rules to implement this section.

SECTION 8. Amends Section 42.002(23), Human Resources Code, to redefine "other maltreatment."

SECTION 9. 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 10. Repealer: Section 261.401(a) (relating to the definitions of "abuse," "exploitation," and "neglect"), Family Code.

SECTION 11. (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 12. Effective date: September 1, 2017.