

FAMILY CODE

SUBTITLE E. PROTECTION OF THE CHILD

CHAPTER 261. INVESTIGATION OF REPORT OF CHILD ABUSE OR NEGLECT

SUBCHAPTER A. GENERAL PROVISIONS

§ 261.001. DEFINITIONS. In this chapter:

(1) "Abuse" includes the following acts or omissions by a person:

- (A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- (C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- (D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- (E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
- (F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- (G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;
- (H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;
- (I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- (J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code; or
- (K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.

(2) "Department" means the Department of Protective and Regulatory Services.

(3) "Designated agency" means the agency designated by

the court as responsible for the protection of children.

(4) "Neglect" includes:

- (A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

- (i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
- (ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
- (iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or
- (iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(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.

(6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

(7) "Board" means the Board of Protective and Regulatory Services.

(8) "Born addicted to alcohol or a controlled substance" means a child:

- (A) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and
- (B) who, after birth as a result of the mother's use of the controlled substance or alcohol:
 - (i) experiences observable withdrawal from the alcohol or controlled substance;
 - (ii) exhibits observable or harmful effects in the child's physical appearance or functioning; or
 - (iii) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 86, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 63, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 19.01(26), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 59, § 1, eff. Sept. 1, 2001.

§ 261.002. CENTRAL REGISTRY. (a) The department shall establish and maintain in Austin a central registry of reported cases of child abuse or neglect. (b) The department may adopt rules necessary to carry out this section. The rules shall provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

§ 261.003. APPLICATION TO STUDENTS IN SCHOOL FOR DEAF OR SCHOOL FOR BLIND AND VISUALLY IMPAIRED. This chapter applies to the investigation of a report of abuse or neglect of a student, without regard to the age of the student, in the Texas School for the Deaf or the Texas School for the Blind and Visually Impaired.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

§ 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN. (a) The department shall prepare and disseminate statistics by county relating to the department's activities under this subtitle and include the information specified in Subsection (b) in an annual report available to the public. (b) The department shall report the following information:

- 1) the number of initial phone calls received by the department alleging abuse and neglect;
- 2) the number of children reported to the department as having been abused and neglected;
- 3) the number of reports received by the department alleging abuse or neglect and assigned by the department for investigation;
- 4) of the children to whom Subdivision (2) applies:

- (A) the number for whom the report was substantiated;
- (B) the number for whom the report was unsubstantiated;
- (C) the number for whom the report was determined to be false;
- (D) the number who did not receive services from the department under a state or federal program;
- (E) the number who received services, including preventative services, from the department under a state or federal program; and
- (F) the number who were removed from the child's home during the preceding year;
 - i.) the number of families in which the child was not removed, but the child or family received services from the department;
 - ii.) the number of children who died during the preceding year as a result of child abuse or neglect;
 - iii.) of the children to whom Subdivision (6) applies, the number who were in foster care at the time of death;
 - iv.) the number of child protective services workers responsible for report intake, assessment, or investigation;
 - v.) the response time by the department with respect to conducting an initial investigation of a report of child abuse or neglect;
 - vi.) the response time by the department with respect to commencing services to families and children for whom an allegation of abuse or neglect has been made;
 - vii.) the number of children who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child;
 - viii.) the number of cases pursued by the department in each stage of the judicial process, including civil and criminal proceedings and the results of each proceeding; and
 - ix.) the number of children for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child.
 - x.) The department shall compile the information specified in Subsection (b) for the preceding year in a report to be submitted to the legislature and the general public not later than February 1 of each year.

Added by Acts 1997, 75th Leg., ch. 1022, § 64, eff. Sept. 1, 1997.

SUBCHAPTER B. REPORT OF ABUSE OR NEGLECT; IMMUNITIES

§ 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT. (a) A person having cause to believe that a child's physical or mental health or welfare has been adversely

affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.

(d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:

- (1) as provided by Section 261.201; or
- (2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 87, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 162, § 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, § 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 65, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 6.29, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, § 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, § 21, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, § 5.003, eff. Sept. 1, 2001.

§ 261.102. MATTERS TO BE REPORTED. A report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 88, eff. Sept. 1, 1995.

§ 261.103. REPORT MADE TO APPROPRIATE AGENCY. (a) Except as provided by Subsection (b) and Section 261.405, a report shall be made to:

- (1) any local or state law enforcement agency;
- (2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or

(4) the agency designated by the court to be responsible for the protection of children.

(b) A report may be made to the Texas Youth Commission instead of the entities listed under Subsection (a) if the report is based on information provided by a child while under the supervision of the commission concerning the child's alleged abuse of another child.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 89, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1477, § 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1297, § 46, eff. Sept. 1, 2001.

§ 261.104. CONTENTS OF REPORT. The person making a report shall identify, if known:

- (1) the name and address of the child;
- (2) the name and address of the person responsible for the care, custody, or welfare of the child; and
- (3) any other pertinent information concerning the alleged or suspected abuse or neglect.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 90, eff. Sept. 1, 1995.

§ 261.105. REFERRAL OF REPORT BY DEPARTMENT OR LAW ENFORCEMENT. (a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the department or the designated agency.

(b) The department or designated agency shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

(c) In addition to notifying a law enforcement agency, if the report relates to a child in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to the agency for investigation.

(d) If the department initiates an investigation and determines that the abuse or neglect does not involve a person responsible for the child's care, custody, or welfare, the department shall refer the report to a law enforcement agency for further investigation. If the department determines that the abuse or neglect involves an employee of a public primary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the school district in which the employee is employed about the investigation.

(e) In cooperation with the department, the Texas Youth Commission by rule shall adopt guidelines for identifying a report made to the commission under Section 261.103(b) that is appropriate to refer to the department or a law enforcement agency for investigation. Guidelines adopted under this

subsection must require the commission to consider the severity and immediacy of the alleged abuse or neglect of the child victim.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, § 66, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1477, § 25, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 374, § 3, eff. June 18, 2003.

§ 261.1055. NOTIFICATION OF DISTRICT ATTORNEYS. (a) A district attorney may inform the department or designated agency that the district attorney wishes to receive notification of some or all reports of suspected abuse or neglect of children who were in the county at the time the report was made or who were in the county at the time of the alleged abuse or neglect.

(b) If the district attorney makes the notification under this section, the department or designated agency shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney as requested and the department or designated agency shall forward a copy of the reports to the district attorney on request.

Added by Acts 1997, 75th Leg., ch. 1022, § 67, eff. Sept. 1, 1997.

§ 261.106. IMMUNITIES. (a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person's responsibilities.

(c) A person who reports the person's own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 91, eff. Sept. 1, 1995.

§ 261.107. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

(b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may

be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.

(c) The appropriate county prosecuting attorney shall be responsible for the prosecution of an offense under this section.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

Amended by Acts 1995, 74th Leg., ch. 751, § 92, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 68; Acts 1999, 76th Leg., ch. 62, § 6.30, eff. Sept. 1, 1999.

§ 261.108. FRIVOLOUS CLAIMS AGAINST PERSON REPORTING. (a) In this section:

(1) "Claim" means an action or claim by a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, requesting recovery of damages.

(2) "Defendant" means a party against whom a claim is made.

(b) A court shall award a defendant reasonable attorney's fees and other expenses related to the defense of a claim filed against the defendant for damages or other relief arising from reporting or assisting in the investigation of a report under this chapter or participating in a judicial proceeding resulting from the report if:

(1) the court finds that the claim is frivolous, unreasonable, or without foundation because the defendant is immune from liability under Section 261.106; and

(2) the claim is dismissed or judgment is rendered for the defendant.

(c) To recover under this section, the defendant must, at any time after the filing of a claim, file a written motion stating that:

(1) the claim is frivolous, unreasonable, or without foundation because the defendant is immune from liability under Section 261.106; and

(2) the defendant requests the court to award reasonable attorney's fees and other expenses related to the defense of the claim.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

§ 261.109. FAILURE TO REPORT; PENALTY. (a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and knowingly fails to report as provided in this chapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.