

# **Texas SB 471 – Preventing Child Sexual Abuse and Maltreatment Changes in the Law for Schools, Day Cares and Child Placing Agencies**

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## **ANALYSIS FOR DAY CARE CENTERS AND CHILD PLACING AGENCIES**

In 2009 the Texas Legislature passed Jenna’s Law, calling for each public school district to adopt and implement policy aimed at preventing child sexual abuse. This policy, according to the 2009 law, was to implement methods for increasing teacher, student and parent awareness regarding sexual abuse of children.

In mid-June 2011, the Governor of Texas signed SB 471 into law, amending current law related to public schools, charter schools, day care centers and child placing agencies. SB 471 amendments require child abuse and neglect *training* and *policies* in schools and child care facilities. Though impacted entities are clearly identified, lawmakers addressed the challenge of ‘how’ to require the desired change, given that public schools comply with requirements found in the Texas Education Code, while Day Care Centers and Child Placing Agencies comply primarily with the Human Resources Code. SB 471 makes modifications to both the Education Code and the Human Resources Code – but amendments to the respective Codes are not identical. The amendments are analyzed in two separate sections in this writing: one for schools, and another for child-care entities.

MinistrySafe and Abuse Prevention Systems provide ministry-based and secular trainings and policies to hundreds of entities (in Texas and elsewhere) that provide services to children. As attorneys, we closely follow changes in Texas law related to our realm of practice: child sexual abuse litigation and prevention. Our goal is to provide excellent training and tools consistent with existing and emerging legal requirements, both live and online. To learn more about online sexual abuse awareness training, tracking systems, sample policies, HR screening forms and additional resources available through membership, go to [www.MinistrySafe.com](http://www.MinistrySafe.com) or [www.AbusePreventionSystems.com](http://www.AbusePreventionSystems.com).

### **DAY CARE CENTERS and CHILD PLACING AGENCIES**

SB 471 refers to existing legal requirements before creating additional requirements for Day Care Centers and Child Placing Agencies related to awareness and prevention of child abuse. Day Care Centers and Child Placing Agencies must understand new requirements outlined in SB 471 to correctly implement the required training and policies. Below is a copy of SB 471 with section-by-section analysis *tailored for Day Care Centers and Child Placing Agencies*, and an appendix containing all other code sections referenced in the new law.

## CHANGES IN THE LAW FOR SCHOOLS

SB 471 amends the 2009 legislation (Jenna's Law) and provides new requirements with references to code sections in the Texas Family Code. Schools must understand the new requirements outlined in SB 471 to correctly implement the required training and policies. To access a copy of SB 471 with section-by-section analysis *tailored for schools* and *charter schools*, click [HERE](#).

## ADDITIONAL OBSERVATIONS

Given reports of sexual abuse in Texas schools over the past five years, this piece of legislation is needed. Thankfully, the Texas legislature does not join the ranks of others relying upon a different or more thorough criminal background check as a 'silver bullet' for child abuse prevention. According to repeated academic and law enforcement studies, less than 10% of sexual abusers will EVER encounter the criminal justice system. For the remaining 90% (or more) who abuse children, a more stringent criminal background check reveals *nothing*.

Though *appropriate* criminal background checks are necessary, the problem of child sexual abuse is best addressed by safety systems based on education and training: raising awareness of the frequency, indications of and methods to prevent sexual abuse, as well as 'grooming behaviors' of sexual abusers. SB 471 requires this type of training.

***Private schools should take note.*** **Public schools enjoy protection from civil litigation that private schools do not.** SB 471 is an expansion of Jenna's Law, which created a new 'standard of care' for sexual abuse prevention in Texas schools. This standard of care defines what is *reasonable* for organized educational activities in our state. Because the same risks exist in private schools, private school behavior will be judged by the same standard of care laid out in Jenna's Law and SB 471.

***Unlicensed Day Cares*** should take note, as well. Many churches provide day care services, but have modified their program so as to avoid the requirement of licensure (i.e. reduced the number of days per week that care is available). SB 471 creates a 'standard of care' for sexual abuse prevention for those entities that deliver day care related services. This standard of care defines what is *reasonable* for day care programs in the state of Texas – licensed or unlicensed. Because the same risks exist, an unlicensed Day Care will be judged by the standard of care laid out in SB 471.

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Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, they represent ministry and secular organizations such as schools, camps, churches, youth sports organizations, foster/adoption entities and para-church ministries.

**MinistrySafe and Abuse Prevention Systems**

In addition to an active law practice, Love and Norris are co-founders and Directors of MinistrySafe and Abuse Prevention Systems, entities dedicated to sexual abuse awareness and prevention. MinistrySafe and Abuse Prevention Systems provide Sexual Abuse Awareness Training (live and online) and assist schools, child placing agencies, child care entities and ministries in the design and implementation of safety systems which reduce the risk of child sexual abuse. Love and Norris are frequent speakers before educational entities, youth and children's ministries, day care, adoption and foster care organizations, and youth camps. Recent national and regional audiences have included the National Association of Church Business Administration (NACBA), Kanakuk Kamps, National Council for Adoption (NCFA), Presbyterian General Assembly, Church of the Nazarene, Youth Ministry Institute (NOBTS), Prevent Child Abuse Texas, Texas Alliance for Children, Young Life, and the American Camp Association (regionally and nationally).

**S.B. No. 471**

**AN ACT**

relating to public school, child-placing agency, and day-care center policies addressing sexual abuse and other maltreatment of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

**Section 1**

**Section 2**

**Section 6**

These sections are omitted in this analysis as they relate specifically to public and charter schools.

**Section 3**

Subsequent sections of SB 471 require training and policies addressing sexual abuse and 'other maltreatment' of children. Section 3 simply provides the definitional background to make the following sections understandable. Day Care Centers and Child Placing Agencies are directed to Section 261.001 and 261.401 of the Texas Family Code for what is meant by 'other maltreatment'. Those sections of the Texas Family Code are provided below. Though a definition is provided/referenced, it is a very broad definition, which actually differs between Section 261.001 and 261.401.

**SECTION 3. Section 42.002, Human Resources Code, is amended by adding Subdivision (23) to read as follows:**

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001<sup>1</sup> or 261.401<sup>2</sup>, Family Code; or

(B) neglect, as defined by Section 261.001 or 261.401, Family Code.

<sup>1</sup> Sections 261.001 and 261.401 are provided below in Appendix 1

<sup>2</sup> Sections 261.001 and 261.401 are provided below in Appendix 1

#### Section 4

Section 42.0426(a)(1) already requires licensed facilities to provide training for staff members concerning the recognition of symptoms of child abuse, neglect, and sexual molestation, as well as reporting responsibilities. See this code section in Appendix 2, below.

Newly added Section 42.04261 specifically identifies Child Placing Agencies and Day Care Centers for additional requirements. Subsection (b) requires that the training be at least one hour in length and be completed annually. Subsections (a) and (b) require that training include recognizing symptoms of abuse/neglect, reporting responsibilities, and identification of community resources which can provide further resources and training.

**SECTION 4. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.04261 to read as follows:**

Sec. 42.04261. OTHER TRAINING OF PERSONNEL: CHILD-PLACING AGENCIES AND DAY-CARE CENTERS.

(a) Notwithstanding Section 42.0426(a)(1)<sup>3</sup>, a child-placing agency or day-care center shall provide training for staff members in prevention techniques for and the recognition of symptoms of sexual abuse and other maltreatment of children and the responsibility and procedure of reporting suspected occurrences of sexual abuse and other maltreatment of children to the department or other appropriate entity.

(b) The type of training required under Subsection (a) shall be determined by department rule. The training must be provided for at least an hour annually and must include training concerning:

(1) factors indicating a child is at risk for sexual abuse or other maltreatment;

(2) likely warning signs indicating a child may be a victim of sexual abuse or other maltreatment;

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<sup>3</sup> Section 42.0426 is provided below in Appendix 2

- (3) internal procedures for reporting sexual abuse or other maltreatment;  
and  
(4) community organizations that have existing training programs that are able to provide training or other education for child-placing agency or day-care center staff members, children, and parents.

(c) If a child-placing agency or day-care center determines that it does not have sufficient resources to provide the training required under this section, the agency or center may contact a department licensing employee to obtain information concerning community organizations that will provide such training at no cost to the agency or center.

#### **Section 5**

**Newly added Section 42.0428 directs Child Placing Agencies and Day Care Centers to adopt and implement policies addressing sexual abuse and ‘other maltreatment’. Subsections (b) and (c) require that policies include methods to raise staff and parent awareness regarding sexual abuse (and ‘other maltreatment’) and its prevention, including warning signs of abuse. Subsection (c) requires that these methods include the training described in Section 4 above, as well as strategies to coordinate with community organizations that deal with abuse and neglect of children.**

**SECTION 5. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0428 to read as follows:**

**Sec. 42.0428. POLICIES ADDRESSING SEXUAL ABUSE AND OTHER MALTREATMENT OF CHILDREN.**

**(a) Each child-placing agency or day-care center shall adopt and implement a policy addressing sexual abuse and other maltreatment of children.**

(b) A policy required by this section must address:

(1) methods for increasing child-placing agency and day-care center staff and parent awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse or other maltreatment; and

(2) actions that, after contacting an agency or center, the parent of a child who is a victim of sexual abuse or other maltreatment should take to obtain assistance and intervention.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children must include:

(1) the training required under Section 42.04261; and

(2) strategies for coordination between the child-placing agency or day-care center and appropriate community organizations.

## **Section 7**

**The requirements of this Act are presently in effect.**

**SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.**

# APPENDICES

**Texas Human Resources Code, Chapter 42, and sections from the Texas Family Code, Chapter 261, are the laws that require the Texas Department of Family and Protective Services (DFPS) to regulate child-care and child-placing activities in Texas, to investigate alleged abuse and neglect in child-care facilities, and to create and enforce minimum standards.**

## APPENDIX NO. 1

# Texas Family Code - Section 261.001 Definitions

**§ 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 Family and Protective 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;

(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

(v) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another 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; Acts 2005, 79th Leg., ch. 268, § 1.11, eff. Sept. 1, 2005.

## **Texas Family Code - Section 261.401**

### **Agency Investigation**

(a) Notwithstanding Section 261.001, in this section:

(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.

(b) A state agency that operates, licenses, certifies, or registers a facility in which children are located or provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

(c) A state agency shall adopt rules relating to the investigation and resolution of reports received as provided by this subchapter. The Health and Human Services Commission shall review and approve the rules of agencies other than the Texas Department of Criminal Justice, Texas Youth Commission, or Texas Juvenile Probation Commission to ensure that those agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

(d) The Texas School for the Blind and Visually Impaired and the Texas School for the Deaf shall adopt policies relating to the investigation and resolution of reports received as provided by this subchapter. The Health and Human Services Commission shall review and approve the policies to ensure that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf adopt those policies in a manner consistent with the minimum standards adopted by the Health and Human Services Commission under Section 261.407.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 98, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 355, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 29, eff. September 1, 2007.

## APPENDIX NO. 2

# Texas Human Resources Code - Section 42.0426 Training Of Personnel

§ 42.0426. TRAINING OF PERSONNEL.

(a) A licensed facility shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

(b) A residential child-care facility shall implement a behavior intervention program approved by the department for the benefit of a child served by the facility who needs assistance in managing the child's conduct. The program must include:

(1) behavior intervention instruction for staff members who work directly with children served by the facility; and

(2) training for all employees regarding the risks associated with the use of prone restraints.

Added by Acts 1997, 75th Leg., ch. 1022, § 25, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., ch. 268, § 1.95, eff. Sept. 1, 2005.