

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 SCHOOLS

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 or www.AbusePreventionSystems.com.

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 need to understand the 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 Schools*, and an appendix containing all other code sections referenced in the new law.**

DAY CARE CENTERS and CHILD PLACING AGENCIES

SB 471 references existing requirements before creating additional requirements for Day Care Centers and Child Placing Agencies relative 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. To access a copy of SB 471 with section-by-section analysis *tailored for Day Care Centers and Child Placing Agencies*, 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

Prior to the enactment of SB 471, each school district was required to submit a district improvement plan that provided for, among other things, the prevention of sexual abuse. SB 471 amended Section 11.252 of the Education Code such that the district improvement plan must also provide for the prevention of 'other maltreatment'. The definition of 'other maltreatment' is provided through an amendment to Section 38.0041(h) – which is a reference, ultimately, to Sections 261.001 and 261.401 of the Texas Family Code (see Appendix 6 and Appendix 7, below).

SECTION 1. Subsection (a), Section 11.252,¹ Education Code, is amended to read as follows:

(a) Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the student achievement indicators adopted under Section 39.053. The district improvement plan must include provisions for:

[Nos. 1 through 8 omitted]

(9) the policy under Section 38.0041² addressing sexual abuse and other maltreatment of children.

¹ Section 11.252 provided below in Appendix 1

² Sections 38.004 and 38.0041 provided below in Appendix 2

Section 2

SB 471 amends Section 38.0041(a) such that open-enrollment charter schools are required to adopt and implement the policies and trainings outlined in amended Section 38.0041 subsections (b) and (c).

SECTION 2. Section 38.0041³, Education Code, is amended to read as follows:

Sec. 38.0041. POLICIES ADDRESSING SEXUAL ABUSE AND OTHER MALTREATMENT OF CHILDREN.

(a) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse and other maltreatment of children, to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

Section 2

Section 38.0042(b) is amended to broaden the scope of trainees from ‘teachers’ to ‘staff’.

The underlying purpose of Jenna’s Law and the amendments/additions provided by SB 471 is to raise awareness of issues regarding sexual abuse (and ‘other maltreatment’) for those involved in education (staff, parents and students). Section 38.0041(b) and 38.0041(c) now provide more detail about what the policies and training must include, who must receive it, and how often it is received.

The policy required by Section 38.0041(b) must address ‘methods’ for increasing awareness of abuse and neglect, including methods to prevent, and likely warning signs that a child may be a victim of abuse or neglect. Further, the policy must address actions a victim of abuse or neglect should take to obtain assistance and intervention, and counseling options available to students affected by abuse or neglect.

‘Methods’ for increasing awareness is defined by newly enacted Section 38.0041(c), below.

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

(1) methods for increasing staff [~~teacher~~], student, and parent awareness of

³ **Sections 38.004 and 38.0041 provided below in Appendix 2**

issues regarding sexual abuse and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse or other maltreatment, using resources developed by the agency under Section 38.004⁴;

(2) actions that a child who is a victim of sexual abuse or other maltreatment should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse or other maltreatment.

Section 2

Section 38.0042(c) provides guidance regarding the ‘methods’ for increasing awareness, as required by Section 38.0042(b), above.

‘Methods’ within the new policy must include staff training in the recognition of sexual abuse (and ‘other maltreatment’) and techniques to prevent abuse and neglect. Presumably, this training would include a detailed description of the characteristics of a sexual abuser and the grooming process used to prepare a child for inappropriate sexual touch, similar to the training requirements of the Texas Youth Camp Act.

Sections 38.0041(c)(3)(A), (B) and (C) provide additional detail for the required training: factors and warning signs indicating that a child is at risk, internal procedures for seeking assistance for a child who is at risk, methods to reduce risk, and information about community organizations providing additional training or resources.

The training must be completed by all NEW educators, counselors, coaches and professional staff members. In contrast, the training MAY be provided annually to any ‘district or charter school staff member’. It is unclear whether the training is optional for existing educators, counselors, coaches and staff members, or whether the legislature intended to make the training optional for staff members at the ‘district level’.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding sexual abuse and other maltreatment of children must include training, as provided by this subsection, concerning prevention techniques for and recognition of sexual abuse and all other maltreatment of children. The training:

⁴ Section 38.004 provided below in Appendix 2

(1) must be provided, as part of a new employee orientation, to new school district and open-enrollment charter school educators, including counselors and coaches, and other district and charter school professional staff members;

(2) may be provided annually to any district or charter school staff member; and

(3) must include training concerning:

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

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

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk of sexual abuse or other maltreatment; and

(E) community organizations that have relevant existing research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff members, students, and parents.

Section 2

Newly enacted Section 38.0042(d) requires each school district to maintain records of those school staff members who completed the required training.

(d) For any training under Subsection (c), each school district and open-enrollment charter school shall maintain records that include the name of each district or charter school staff member who participated in the training.

(e) If a school district or open-enrollment charter school determines that the district or charter school does not have sufficient resources to provide the training required under Subsection (c), the district or charter school shall work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(f) The training under Subsection (c) may be included in staff development under Section 21.451.⁵

(g) A school district or open-enrollment charter school employee may not be subject to any disciplinary proceeding, as defined by Section 22.0512(b)⁶, resulting from an action taken in compliance with this section. The requirements of this section are considered to involve an employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Section 22.0511.⁷ Nothing in this section may be considered to limit the immunity from liability provided under Section 22.0511.

(h) For purposes of this section, "other maltreatment" has the meaning assigned by Section 42.002, Human Resources Code.⁸

⁵ Section 21.451 is provided below in Appendix 3

⁶ Section 22.0512 is provided below in Appendix 5

⁷ Section 25.0511 is provided below in Appendix 4

⁸ Section 42.002 of the Human Resources Code (as amended) is provided below in

SECTION 3. [for child-placing agencies and day-care centers]

SECTION 4. [for child-placing agencies and day-care centers]

SECTION 5. [for child-placing agencies and day-care centers]

Section 6

The amendments and new provisions outlined in SB 471 are in effect.

SECTION 6. Subsection (a), Section 11.252, Education Code, as amended by this Act, applies beginning with the 2011-2012 school year.

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.

Appendix 6; Sections 261.001 and 261.401 of the Texas Family Code are provided below in Appendix 7.

APPENDICES

APPENDIX NO. 1

Texas Education Code - Section 11.252 District-Level Planning And Decision-Making

§ 11.252. DISTRICT-LEVEL PLANNING AND DECISION-MAKING.

(a) Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus staff in the improvement of student performance for all student groups in order to attain state standards in respect to the academic excellence indicators adopted under Section 39.051. The district improvement plan must include provisions for:

(1) a comprehensive needs assessment addressing district student performance on the academic excellence indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29;

(2) measurable district performance objectives for all appropriate academic excellence indicators for all student populations, including students in special education programs under Subchapter A, Chapter 29, and other measures of student performance that may be identified through the comprehensive needs assessment;

(3) strategies for improvement of student performance that include:

(A) instructional methods for addressing the needs of student groups not achieving their full potential;

(B) methods for addressing the needs of students for special programs, such as suicide prevention, conflict resolution, violence prevention, or dyslexia treatment programs;

(C) dropout reduction;

(D) integration of technology in instructional and administrative programs;

(E) discipline management;

(F) staff development for professional staff of the district;

(G) career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities; and

(H) accelerated education;

(4) strategies for providing to middle school, junior high school, and high school students, those students' teachers and counselors, and those students' parents information about:

(A) higher education admissions and financial aid opportunities;

(B) the TEXAS grant program and the Teach for Texas grant program established under Chapter 56;

(C) the need for students to make informed curriculum choices to be prepared for success beyond high school; and

(D) sources of information on higher education admissions and financial aid;

(5) resources needed to implement identified strategies;

(6) staff responsible for ensuring the accomplishment of each strategy;

(7) timelines for ongoing monitoring of the implementation of each improvement strategy; and

(8) formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance.

(9) the policy under Section 38.0041 addressing sexual abuse and other maltreatment of children.

(b) A district's plan for the improvement of student performance is not filed with the agency, but the district must make the plan available to the agency on request.

(c) In a district that has only one campus, the district- and campus-level committees may be one committee and the district and campus plans may be one plan.

(d) At least every two years, each district shall evaluate the effectiveness of the district's decision-making and planning policies, procedures, and staff development activities

related to district- and campus-level decision-making and planning to ensure that they are effectively structured to positively impact student performance.

(d-1) Expired.

(e) The district-level committee established under Section 11.251 shall hold at least one public meeting per year. The required meeting shall be held after receipt of the annual district performance report from the agency for the purpose of discussing the performance of the district and the district performance objectives. District policy and procedures must be established to ensure that systematic communications measures are in place to periodically obtain broad-based community, parent, and staff input and to provide information to those persons regarding the recommendations of the district-level committee. This section does not create a new cause of action or require collective bargaining.

(f) A superintendent shall regularly consult the district-level committee in the planning, operation, supervision, and evaluation of the district educational program.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 1202, § 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1590, § 6, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 1261, § 7, eff. June 15, 2001.

APPENDIX NO. 2

Texas Education Code - Sections 38.004 & 38.0041 Child Abuse Reporting And Programs

Sec. 38.004. CHILD ABUSE REPORTING AND PROGRAMS.

(a) The agency shall develop a policy governing the child abuse reports required by Chapter 261, Family Code, of school districts and their employees. The policy must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parents if necessary, including investigations by the Department of Protective and Regulatory Services. Each school district shall adopt the policy.

(a-1) The agency shall:

(1) maintain on the agency Internet website a list of links to websites that provide information regarding the prevention of child abuse; and

(2) develop and periodically update a training program on prevention of child abuse that a school district may use for staff development.

(b) Each school district shall provide child abuse antivictimization programs in elementary and secondary schools.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 561 Sec. 1, eff. June 16, 2007.

Sec. 38.0041. POLICIES ADDRESSING SEXUAL ABUSE OF CHILDREN.

(a) Each school district shall adopt and implement a policy addressing sexual abuse of children to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

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

(1) methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, using resources developed by the agency under Section 38.004;

(2) actions that a child who is a victim of sexual abuse should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse.

Added by Acts 2009, 81st Leg., R.S., Ch. 1115, Sec. 2, eff. June 19, 2009.

APPENDIX NO. 3

Texas Education Code - Section 21.451 Staff Development Requirements

§ 21.451. STAFF DEVELOPMENT REQUIREMENTS.

(a) The staff development provided by a school district must be:

- (1) conducted in accordance with standards developed by the district; and
- (2) designed to improve education in the district.

(b) The staff development must be predominantly campus-based, related to achieving campus performance objectives established under Section 11.253, and developed and approved by the campus-level committee established under Section 11.251.

(c) A school district may use district-wide staff development developed and approved through the district-level decision process under Section 11.251.

(d) The staff development may:

(1) include training in:

- (A) technology;
- (B) conflict resolution; and
- (C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37;

(2) include training that:

- (A) relates to instruction of students with disabilities; and
- (B) is designed for educators who work primarily outside the area of special education; and

(3) include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 396, § 2.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 766, § 1, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 495, § 1, eff. Sept. 1, 2003.

APPENDIX NO. 4

Texas Education Code - Section 22.0511

Immunity From Liability

§ 22.0511. IMMUNITY FROM LIABILITY.

(a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

(c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Renumbered from § 22.051 and amended by Acts 2003, 78th Leg., ch. 204, § 15.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1197, § 1, eff. Sept. 1, 2003.

APPENDIX NO. 5

Texas Education Code - Section 22.0512 Immunity From Disciplinary Proceedings For Professional Employees

§ 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR PROFESSIONAL EMPLOYEES.

(a) A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62, Penal Code.

(b) In this section, "disciplinary proceeding" means:

(1) an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or

(2) an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041(b)(8).

(c) This section does not prohibit a school district from:

(1) enforcing a policy relating to corporal punishment; or

(2) notwithstanding Subsection (a), bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment.

Added by Acts 2003, 78th Leg., ch. 1197, § 1, eff. Sept. 1, 2003.

APPENDIX NO. 6

Texas Human Resources Code - Section 42.002 Definitions

§ 42.002. DEFINITIONS. In this chapter:

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001 or 261.401, Family Code; or

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

APPENDIX NO. 7

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. Sec. 29, eff. September 1, 2007.