

TEXAS

SUBCHAPTER B. REPORT OF ABUSE OR NEGLECT; IMMUNITIES

Sec. 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 or 261.401, 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 87, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 162, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 65, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 6.29, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1150, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, Sec. 21, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 5.003, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [949](#), Sec. 27, eff. September 1, 2005.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 88, eff. Sept. 1, 1995.

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

- (1) any local or state law enforcement agency;
- (2) the department;
- (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.

(c) Notwithstanding Subsection (a), a report, other than a report under Subsection (a)(3) or Section 261.405, must be made to the department if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 89, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1477, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1297, Sec. 46, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [213](#), Sec. 1, eff. September 1, 2005.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 90, eff. Sept. 1, 1995.

Sec. 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.

(c-1) Notwithstanding Subsections (b) and (c), if a report under this section relates to a child with mental retardation receiving services in a state supported living center as defined by Section 531.002, Health and Safety Code, or the ICF-MR component of the Rio Grande State Center, the department shall proceed with the investigation of the report as provided by Section 261.404.

(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, Sec. 1, eff. April 20, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 66, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1477, Sec. 25, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 374, Sec. 3, eff. June 18, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [284](#), Sec. 4, eff. June 11, 2009.

Sec. 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, Sec. 67, eff. Sept. 1, 1997.

Sec. 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, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 91, eff. Sept. 1, 1995.

Sec. 261.107. FALSE REPORT; CRIMINAL PENALTY; CIVIL PENALTY. (a) A person commits an offense if, with the intent to deceive, the person knowingly makes a report as provided in this chapter that is false. An offense under this subsection is a state jail felony 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 felony of the third degree.

(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.

(d) The court shall order a person who is convicted of an offense under Subsection (a) to pay any reasonable attorney's fees incurred by the person who was falsely accused of abuse or neglect in any proceeding relating to the false report.

(e) A person who engages in conduct described by Subsection (a) is liable to the state for a civil penalty of \$1,000. The attorney general shall bring an action to recover a civil penalty authorized by this subsection.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, Sec. 92, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 68; Acts 1999, 76th Leg., ch. 62, Sec. 6.30, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.14(a), eff. September 1, 2005.

Sec. 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, Sec. 1, eff. April 20, 1995.

Sec. 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 A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the child was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [284](#), Sec. 5, eff. June 11, 2009.

Sec. 261.110. EMPLOYER RETALIATION PROHIBITED. (a) In this section, "professional" has the meaning assigned by Section 261.101(b).

(b) An employer may not suspend or terminate the employment of, or otherwise discriminate against, a person who is a professional and who in good faith:

(1) reports child abuse or neglect to:

(A) the person's supervisor;

(B) an administrator of the facility where the person is employed;

(C) a state regulatory agency; or

(D) a law enforcement agency; or

(2) initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

(c) A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of this section may sue for injunctive relief, damages, or both.

(d) A plaintiff who prevails in a suit under this section may recover:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;

(3) court costs; and

(4) reasonable attorney's fees.

(e) In addition to amounts recovered under Subsection (d), a plaintiff who prevails in a suit under this section is entitled to:

(1) reinstatement to the person's former position or a position that is comparable in terms of compensation, benefits, and other conditions of employment;

(2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and

(3) compensation for wages lost during the period of suspension or termination.

(f) A public employee who alleges a violation of this section may sue the employing state or local governmental entity for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section. A person having a claim under this section may sue a governmental unit for damages allowed by this section.

(g) In a suit under this section against an employing state or local governmental entity, a plaintiff may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

(1) \$50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(2) \$100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(3) \$200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and

(4) \$250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(h) If more than one subdivision of Subsection (g) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this section is governed by the applicable provision that provides the highest damage award.

(i) A plaintiff suing under this section has the burden of proof, except that there is a rebuttable presumption that the plaintiff's employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person made a report in good faith.

(j) A suit under this section may be brought in a district or county court of the county in which:

- (1) the plaintiff was employed by the defendant; or
- (2) the defendant conducts business.

(k) It is an affirmative defense to a suit under Subsection (b) that an employer would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee reported child abuse or neglect or initiated or cooperated with an investigation or proceeding relating to an allegation of child abuse or neglect.

(l) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.

(m) This section does not apply to a person who reports the person's own abuse or neglect of a child or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the person's own abuse or neglect of a child.

Added by Acts 2001, 77th Leg., ch. 896, Sec. 1, eff. Sept. 1, 2001.

Sec. 261.111. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT OF CHILD. (a) In this section, "psychotropic drug" means a substance that is:

- (1) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and
- (2) intended to have an altering effect on perception, emotion, or behavior.

(b) The refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic drug to the child, or to consent to any other psychiatric or psychological treatment of the child, does not by itself constitute neglect of the child unless the refusal to consent:

- (1) presents a substantial risk of death, disfigurement, or bodily injury to the child; or
- (2) has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Added by Acts 2003, 78th Leg., ch. 1008, Sec. 3, eff. June 20, 2003.