

CHAPTER NO. 391

HOUSE BILL NO. 447

By Representatives Fowlkes, Lois DeBerry, Sherry Jones, Montgomery, Russell Johnson, Hackworth, Marrero, Langster

Substituted for: Senate Bill No. 1773

By Senators Person, Henry, Burks, Crutchfield, Jackson, Harper, Herron, Bowers, Tracy, Black, Williams and Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Title 37; and to repeal Tennessee Code Annotated, Section 37-1-407, relative to child protective services reform.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 5, is amended by adding Sections 2 through 9 of this act as a new part and the Tennessee code commission is requested to entitle such part "Multi-level Response System for Children and Families."

SECTION 2. As used in this part, unless the context requires otherwise:

(a) "Family" means the members of a household living on a full-time or a part-time basis in one house, condominium, apartment or other dwelling; people related by blood or ancestry, marriage, or adoption; any person who is holding himself out to the public as being a family member of a minor; foster parents and foster children; stepparents and stepchildren; and any other group that the department determines by policy or rule to constitute a family for purposes of this part.

(b) "Maltreatment" means abuse as defined in Tennessee Code Annotated § 37-1-102(b)(1) or child sexual abuse as defined in Tennessee Code Annotated § 37-1-602(a)(3).

SECTION 3.

(a) The purposes of this part are to safeguard and enhance the welfare of children and to preserve family life by preventing harm and sexual abuse to children and by strengthening the ability of families to parent their children effectively through a multi-level response system using available community-based public and private services. It is intended that the department perform its function under this part pursuant to the belief that families can change the circumstances associated with the level of risk to a child when they are provided with intensive and comprehensive services tailored to their strengths and needs. The department's fundamental assumptions shall be that most children are better off with their own families than in substitute care and that separation has detrimental effects on both parents and children. Whenever possible, preservation of the family should serve as the framework for services, but in any case the best interests of the child shall be paramount.

(b) The further purpose of this part is to authorize and require the department to develop a demonstration program to carry out the purposes stated in subsection (a). A

specific objective of the demonstration program is to reduce the incidence of children who are subjected to maltreatment. Until the program is in effect statewide this part shall be in effect only in the areas in which the demonstration program is established.

SECTION 4.

(a) No later than July 1 of the year after this act takes effect the department shall establish a demonstration program that conforms to the requirements of this part and carries out its purposes in at least three but no more than five areas of the state selected by the department. The multi-level response system shall be designed to protect children from maltreatment through the effective use of available community-based public and private services. The program should be staffed by case managers and other personnel and child protective services investigators as called for in this part. There shall be at least one area in each grand division of the state. Areas may be composed of any combination of one or more counties. No later than July 1 of the second year after this act takes effect the demonstration program shall be expanded to include a total of no less than ten areas of the state selected by the department. No later than July 1 of the fifth year after this act takes effect the program shall be implemented in all areas of the state. To facilitate accomplishment of the purposes of this part the department shall establish a state advisory committee composed of representatives from the offices of the commissioner of correction, education, health, human services, and mental health and developmental disabilities, the commission on children and youth, and any other state or community-based public or private agency or office that the department determines serves children or families in ways that might be used in the demonstration program. The department shall pursue the creation of such interagency agreements permitted by law as will enable the department to accomplish the purposes of this part.

(b) The department shall advise the governor, the select committee on children and youth, the senate general welfare committee, and the house children and family affairs committee of the progress it is making towards implementation of the program by providing them on October 1 of the year this act takes effect and every six months thereafter until statewide implementation is achieved a summary progress report highlighting key implementation activities, including but not limited to site selection, timelines, barriers to implementation, identification of needed resources, interagency cooperation, and progress in establishing local advisory committees. After the first year of operation of the program, the department shall include in its report any recommendations for changes in the law, including whether there are any kinds of cases investigated under title 37, chapter 1, parts 4 and 6 that the experience of the department shows can be safely excluded from mandatory investigation under those parts.

SECTION 5.

(a) Upon receipt of a report of harm pursuant to § 37-1-403, the department shall make an initial screening decision using an approved screening instrument. The screening instrument shall be developed by the department and submitted to the select committee on children and youth for comment before being used in the demonstration program. If the report does not allege that the child has been harmed or that the child has been sexually abused, after reviewing the information available and using the screening instrument, the department shall determine whether the child is at risk of

maltreatment. If the child is at risk of maltreatment, the department shall determine whether the appropriate level of intervention is:

(1) Investigation pursuant to title 37, chapter 1;

(2) Assessment of the child and the family's need for and referral to available community-based public or private services;

(3) Referral for available community-based public or private services without assessment or investigation; or

(4) No further action by the department.

(b) If the department receives a report under title 37, chapter 1, part 4 or title 37, chapter 1, part 6, that alleges a child has actually been harmed or sexually abused, the department shall investigate such report, with child protective services investigators to the extent that they are available, pursuant to the provisions of title 37, chapter 1, part 4 or part 6. The department also may proceed at the same time with assessment under this section.

(c) If the department determines that an assessment of the child and family is appropriate, the department shall give the parents, guardian or others exercising parental authority a written and oral explanation of the procedure for assessment of the child and family and its purposes. The assessment of the child and family and identification of service needs shall be based on information gathered from the family and other sources. The department shall have such face-to-face contact with the child, parents, other family members, and other sources as is necessary to make the assessment reliable. If the parent is not present during contact with a child, the child's parent or guardian shall be contacted as soon as possible following contact with the child. The assessment of the child and family shall be completed within forty-five (45) days of receipt of the report. However, upon written justification by the department, the assessment of the child and family may be extended up to a total of sixty (60) days. The assessment of the child and family shall be in writing and shall be completed in accordance with department policy or regulations.

(d) Upon completion of the assessment of child and family, the department shall consult with the family about available community-based public or private services to address the family's needs. When appropriate, families will be offered services through the department, other public agencies, or community-based private agencies, which may include faith-based organizations, to promote meeting the needs of the family. The department may not require a family to participate in available public or private community-based services that it offers the family. If the family does not cooperate with the provision of community-based public or private services or provide alternative services of its own to meet such needs, then the department shall assess whether further steps should be taken to carry out the purposes of this part. If a family that declines services that are offered to them does not provide adequate alternative services of its own, the department shall inform the parents that their actions in declining services may be considered in future action by the department.

(e) If the department determines under subsection (a) that the appropriate level of intervention is referral for available community-based public or private services

without assessment or investigation, then the department may refer the family for preventive community-based public or private services. Families have the option of declining services offered as a result of a report of harm that did not result in an investigation or assessment of child and family. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated or assessed. Any family that declines services offered to them must be informed that their actions in declining services may be considered in evaluating any future reports of harm received by the department.

(f) The department shall commence an immediate investigation if at any time during the provision of services under this part it determines that an investigation is required by title 37, chapter 1, part 4 or title 37, chapter 1, part 6, and that investigation shall be conducted under those provisions. The district attorney general and law enforcement officials shall be informed of the investigation as required under those provisions.

SECTION 6. No later than October 1 of the year after the demonstration program is begun under Section 4 of this act, the department shall submit to the governor, the senate general welfare committee, the house committee on children and family affairs, and the select committee on children and youth a report on the first full year of the demonstration program. No later than October 1 of the next year and each year thereafter until this act is implemented in all areas of the state, the department shall provide an annual report evaluating the demonstration project to the same parties. Upon request, all persons and groups to whom the annual report is distributed shall be entitled to receive a detailed explanation of the procedures used to evaluate the system and shall be given the raw data used to support the report. Outcomes to be evaluated in each of these reports shall include but not be limited to the following:

(1) The safety of children under the program compared with children served under title 37, chapter 1, part 4 and title 37, chapter 1, part 6, in light of the following and other factors that may provide useful information about the effectiveness of the program for its purposes:

(A) The number of cases processed under the program by types of risks and needs addressed;

(B) The number of cases referred for proceedings under title 37, chapter 1, by type;

(C) The number of final dispositions of cases in the current reporting year by disposition as follows:

(i) Closed on initial review;

(ii) Closed after assessment;

(iii) Closed after assessment and referral for available community-based public or private services;

(iv) Numbers and types of cases in which the department proceeded under title 37, chapter 1, after the initial review; and

(v) Numbers and types of cases in which there were reports of harm or sexual abuse under title 37, chapter 1, part 4 or title 37, chapter 1, part 6, with respect to children in a family considered or served under this part.

(D) The extent to which the program has reduced the incidence of children who are subjected to harm or sexual abuse that would require a report under title 37, chapter 1, part 4 or title 37, chapter 1, part 6, or who otherwise would become eligible for services under title 37, chapter 1.

(E) Estimates as to the risk of future harm or sexual abuse to children with respect to whom reports of harm or sexual abuse were determined not to show there had been harm or sexual abuse or to have been invalid.

(F) The type and amount of community-based public or private services received by families.

(2) The timeliness of response by the department under the program;

(3) The timeliness of services provided to children and families under the program;

(4) The level of coordination with public and private community-based service providers to ensure community-based services are available to the public through the program;

(5) The cost effectiveness of the program with respect to the department, available community-based public and private service resources, and law enforcement and judiciary resources that might otherwise have become involved in the cases; and

(6) The effectiveness of the program in enhancing the welfare of children and keeping families together.

Upon implementation of the multi-level response system in any area, the department shall ensure that all data necessary for compliance with this section is collected and maintained.

SECTION 7. Before the demonstration program is instituted in an area, the department shall assure that all personnel in the program in that area are thoroughly trained in matters relating to their role in the program, utilizing to the extent possible existing training resources for each profession. The training shall include information on the culturally diverse community, including but not limited to religious, dietary, and education requirements of families affected by this part. At a minimum, training should be provided to all departmental personnel involved in the demonstration project, including case managers. In addition, the department shall offer training to community-based service providers, attorneys, prosecutors, guardians ad litem, judges, and law enforcement personnel. Informational materials concerning the demonstration program should be prepared for families and their attorneys.

SECTION 8. In each county in which the multi-level response system is implemented, the department shall facilitate the formation of an independent local advisory board, which shall not be a part of the department, and which shall be composed of appropriate community

representatives, including representatives from families in the community, local public agencies including schools, health departments and other health care providers, juvenile court, district attorney general and law enforcement officials, and other available community-based resources. Each local advisory board shall recommend ways to bring together the department, families, and available resource providers within that community and shall assist with the development of community-based resources that may be needed by families. The local advisory board may review individual cases, in its discretion, to the extent that such review can be done without jeopardizing the confidentiality of the records or the confidentiality obligations of those who provided the information. The department shall collaborate with the local advisory board and the community to identify or develop local formal and informal services for children and families.

SECTION 9. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of title 4, chapter 5.

SECTION 10. Tennessee Code Annotated, § 37-1-406, is amended by adding the following as a new subsection:

(_) In jurisdictions that have implemented the multi-level response system in addition to other investigative procedures under this section, local law enforcement officers and district attorneys general having jurisdiction shall assist the department on request in writing if the department determines that it is likely that the case may result in criminal prosecution or that a child protective services worker may be at risk of harm while investigating the following reports of harm:

(1) Any report of harm alleging facts that, if proved, would constitute severe child abuse as defined in § 37-1-102;

(2) Any report of harm alleging facts that, if proved, would constitute child sexual abuse as defined in § 37-1-602;

(3) Any report of harm alleging facts that, if proved, would constitute the following physical injuries to a child:

(A) Head trauma;

(B) Broken bones;

(C) Inflicted burns;

(D) Organic functional impairment as defined by the department;

(E) Broken skin;

(F) Shaken baby syndrome;

(G) Defensive injuries;

(H) Injuries related to physical confinement; or

(l) Infants exposed to illegal narcotics, including methamphetamine.

(4) Any report of harm alleging facts that, if proved, would constitute the following types of neglect:

(A) A child left without supervision in a dangerous environment;

(B) Lack of food or nurturance resulting in a failure to thrive;

(C) Abandonment of a child under the age of eight (8);

(D) Lack of care that results in a life-threatening condition or hospitalization; or

(E) Inaction of the parent resulting in serious physical injury.

(5) Any report of harm alleging facts that would result in the removal of a child from the home pursuant to department policy or rule;

(6) Any report of harm alleging facts that involve a caretaker at any institution, including but not limited to any licensed day care center, public or private school, or hospital; or

(7) Any report of harm alleging facts that, if proved, would constitute any other class of injury identified by the department through policy or rule as necessitating investigation.

If a local law enforcement agency or district attorney general assisting the department under this subsection decides not to proceed with prosecution or terminates prosecution after undertaking it, the agency or district attorney general shall make a written report on a standardized check-off form developed by the department and the Tennessee district attorneys general conference to the department and the juvenile court on the basis for its decision. The department shall compile such reports and present them to the select committee on children and youth as part of its report pursuant to the part titled "Multi-level Response System for Children and Families" in Title 37, Chapter 5. The department shall make quarterly reports to local law enforcement agencies and district attorneys general as to the number and types of cases the department is handling in their jurisdictions on the basis of reports of harm or sexual abuse or of children at risk of being so harmed or sexually abused.

SECTION 11. Tennessee Code Annotated, § 37-1-409, is amended by inserting the following as a new subsection (f) and by re-designating the remaining subsection:

(f) Except as specifically provided in this chapter, nothing in this chapter shall prevent the department from sharing information with the district attorney general and law enforcement personnel for the purpose of cooperating with a law enforcement investigation. Information from departmental records that is shared with the district attorney general or law enforcement by the department shall remain confidential to the same extent that information not shared with the district attorney general and law enforcement is confidential. Unless otherwise ordered by court, or to the extent that

such information is used for criminal prosecution, or to the extent required under the Tennessee rules of criminal procedure after criminal charges have been filed, any portion of shared information that does not become part of a court record shall remain confidential to the same extent as information not shared by the department remains confidential.

SECTION 12. Tennessee Code Annotated, § 37-5-106, is amended by adding the following item:

(_) Administer and fully implement the part of this chapter titled "Multi-level Response System for Children and Families," including making such contracts as may be necessary to carry out the evaluations called for in that part.

SECTION 13. This act shall take effect on July 1 of the year in which it is enacted, the public welfare requiring it.

PASSED: May 24, 2005


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 9th day of June 2005


PHIL BREDESEN, GOVERNOR