PUBLIC CHAPTER NO. 1060

HOUSE BILL NO. 2765

By Representatives Tindell, Armstrong, Harwell, Montgomery, Fincher, Cooper, Towns, Weaver, Dean, Campfield, Hensley, Hardaway, Maggart, Camper, Moore, Sontany, Eldridge, Stewart

Substituted for: Senate Bill No. 2701

By Senators Burchett, Ketron, Barnes, Beavers, Berke, Black, Bunch, Burks, Crowe, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Jackson, Johnson, Kelsey, Kyle, Marrero, McNally, Norris, Overbey, Southerland, Stewart, Tate, Tracy, Watson, Woodson, Yager and Mr. Speaker Ramsey

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 10 and Title 37 relative to the Tennessee Second Look Commission.

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

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 3 is amended by adding a new part thereto:

§ 37-3-801.

This part shall be known and may be cited as the "Tennessee Second Look Commission."

§ 37-3-802.

For purposes of this part, unless the context otherwise requires:

(1) "Appropriate sampling" means cases of a second or subsequent incident of severe child abuse selected by the commission from all profiled cases submitted by the department of children's services;

(2) "Child abuse" has the same meaning as abuse as defined in § 37-1-102;

(3) "Commission" means the Tennessee second look commission;

(4) "Investigatory meetings" means commission meetings where information made confidential pursuant to state or federal law is examined by the commission or information is being discussed that is relevant to a pending criminal action;

(5) "Profiled cases" means cases of a second or subsequent incident of severe child abuse provided by the department of children's services to the commission;

(6) "Second or subsequent incident of severe child abuse" means an indicated incident of severe child abuse to a victim who had a prior indicated incident of child abuse or severe child abuse, as determined by the department of children's services; and

(7) "Severe child abuse" has the same meaning as the term is defined in § 37-1-102.

§ 37-3-803.

(a) There is created the Tennessee second look commission. The commission shall review an appropriate sampling of cases involving a second or subsequent incident of severe child abuse in order to provide recommendations and findings to the general assembly regarding whether or not severe child abuse cases are handled in a manner that provides adequate protection to the children of this state.

(b) The commission's findings and recommendations shall address all stages of investigating and attempting to remedy severe child abuse, including but not limited to:

(1) The reporting, investigating and referring of alleged severe child abuse cases by state agencies and others;

(2) The risk of severe child abuse victims being returned to the custody of the child's abuser or placed by the state in an environment where the child is at risk of being abused a second or subsequent time;

(3) The procedures used by juvenile courts and courts exercising jurisdiction over criminal and civil child abuse, neglect and endangerment cases;

(4) The laws, rules, or guidelines used to determine whether or not an alleged perpetrator of severe child abuse is to be prosecuted;

(5) The causes of severe child abuse in Tennessee and any preventative measures that would reduce the number of severe child abuse cases in this state;

(6) The manner in which severe child abuse data is collected and used by multiple agencies within the state; and

(7) The representation provided to severe child abuse victims, including but not limited to, representation provided by attorneys, guardians and advocates.

(c) The commission may:

(1) Promulgate bylaws to provide for the election of commission officers, establishment of committees, meetings, and other matters relating to commission functions;

(2) Request and receive the cooperation of other state departments and agencies in carrying out the duties of this part; and

(3) Hold hearings, hear testimony, and conduct research and other appropriate activities.

(d)

(1) The commission shall provide a report to the general assembly on the commission's progress in fulfilling its duties set out in this section no later than January 1, 2011.

(2) The commission shall provide a report detailing the commission's findings and recommendations from a review of the appropriate sampling no later than January 1, 2012, and annually thereafter, to the general assembly. Such report shall be submitted to the governor; the judiciary committees of the senate and the house of representatives; the general welfare, health and human resources committee of the senate; the children and family affairs committee of the house of representatives; and the select committee on children and youth.

§ 37-3-804.

(a) Members of the commission shall be as follows:

(1) The director of the Tennessee bureau of investigation or the director's designee;

(2) The executive director of the commission on children and youth or the director's designee;

(3) The executive director of the select committee on children and youth or the director's designee;

(4) The executive director of Tennessee's chapter of children's advocacy center's or the director's designee;

(5) The commissioner of the department of children's services or the commissioner's designee;

(6) The director of the administrative office of the courts or the director's designee;

(7) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives;

(8) Two (2) senators to be appointed by the speaker of the senate;

(9) Two (2) law enforcement officers appointed by the governor with experience investigating severe child abuse cases: one (1) such officer shall be from a county with a population of more than two hundred fifty thousand (250,000) according to the 2000 federal census or any subsequent federal census, and one (1) such officer shall be from a county with a population of less than two hundred fifty thousand (250,000) according to the 2000 federal census or any subsequent federal census.

(10) A district public defender appointed by the district public defenders conference;

(11) A district attorney general appointed by the district attorneys general conference;

(12) A physician with experience conducting exams used to determine whether or not severe child abuse has occurred, appointed by the commission's co-chairs;

(13) An attorney with recognized expertise representing children in child abuse and neglect proceedings, appointed by the commission's co-chairs; and

(14) Two (2) individuals with experience as advocates for children from the nonprofit sector, appointed by the commission's co-chairs.

(b)

(1)

(A) Members of the commission set out in subdivision (a)(1) through (a)(6) shall serve on the commission as long as they hold the positions designated in subdivision (a)(1) through (a)(6).

(B)

(i) Except as otherwise provided for in subdivision (b)(2), members of the commission appointed pursuant to (a)(7) through (a)(14) shall serve four-year terms.

(ii) Notwithstanding any other provision of this section to the contrary, following three (3) successive absences by a member appointed pursuant to (a)(7) through (a)(14) from commission meetings, the co-chairs may declare a vacancy and request that a new member be appointed pursuant to this section who meets the criteria of the replaced member.

(2) The initial members' terms shall be staggered as follows:

(A) Members of the commission appointed pursuant to subsections (a)(7) and (a)(8) shall serve initial terms of two (2) years;

(B) Members of the commission appointed pursuant to subsections (a)(9) through (a)(11) shall serve initial terms of three (3) years; and

(C) Members of the commission appointed pursuant to subsections (a)(12) through (a)(14) shall serve initial terms of four (4) years.

(3) Except as provided in subdivision (b)(4), no commission member shall serve more than two (2) terms, including any partial term.

(4)

(A) Initial appointments shall be made no later than September 1, 2010; all subsequent appointments shall be made no later than February 1 of the year in which an appointment is due to be made. The initial members' terms of office shall commence upon appointment; however, for purposes of calculating the initial terms of the members' offices, the initial appointments shall be deemed to have been made on February 1, 2011.

(B) If a vacancy occurs, it shall be filled by the appointing authority in the same manner as the original appointment and shall be for the unexpired term only.

(C) If a subsequent appointment is not made by the date provided in this subdivision (b)(3), the incumbent member shall serve until the member’s successor is appointed.

(c) The speakers of the respective houses each shall appoint a co-chair from the members named to the commission.

§ 37-3-805.

(a) The commission shall be administratively attached to the Tennessee commission on children and youth, but for all purposes other than administration, shall be an independent commission.

(b) The Tennessee commission on children and youth shall be responsible for:

(1) Scheduling and staffing the commission's meetings;

(2) Notifying witnesses of the date upon which they are requested to appear;

(3) Taking minutes at the commission's meetings;

(4) Compensating members and witnesses for travel expenses when appropriate;

(5) Reviewing department of children's services files and case summaries regarding the appropriate sampling of cases upon which the commission expects to hear testimony;

(6) Providing the commission members with any relevant information; and

(7) Assisting the commission in drafting reports.

§ 37-3-806.

(a) The department of children's services shall, no later than October 1, 2010, provide the commission with a table, detailing profiled cases from the previous fiscal year; thereafter, the department shall provide such table no later than October 1, 2011, and by October 1 annually thereafter, for the previous year. The tables shall include, but not be limited to, the county, type of abuse and age of the child.

(b) The commission shall review the table of profiled cases provided pursuant to subsection (a). The commission shall submit a list of the cases to the department after such review, setting out specific cases from the table that the commission selects to review.

(c) The department shall provide each commission member with a thorough written summary of the procedural history of each of the cases selected for review by the commission, including but not limited to, identifying persons whom the commission may wish to testify to provide additional information.

(d) After reviewing the information referenced in subsection (c), the commission shall select the appropriate sampling from the information

provided by the department; provided that an appropriate sampling shall be no more than ten percent (10%) of the total number of cases profiled.

(e) The commission shall review the appropriate sampling on a schedule determined by the commission; provided that the commission shall submit its final report containing its recommendations and findings concerning the appropriate sampling each year to the general assembly as provided in § 37-3-803(d).

§ 37-3-807.

(a) All members of the commission shall be voting members.

(b) The members of the commission shall receive no salary; provided that members of the commission shall be reimbursed for actual expenses incurred in accordance with the state's comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(c) The commission may provide reimbursement for actual expenses incurred in accordance with the state's comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter to witnesses that have been called to testify before the commission.

§ 37-3-808.

The commission shall meet as necessary to transact business; provided, that meetings shall be held at least quarterly, and the first meeting shall be no later than November 1, 2010. The commission shall meet at such time and place as determined by the co-chairs of the commission announced at least one (1) month in advance of meetings with notice to each member. Written minutes shall be kept of all meetings. At all meetings, ten (10) members shall constitute a quorum for the transaction of business.

§ 37-3-809.

The child advocacy center directors or their designees, the department of children's services, the district attorney general of each judicial district, the district public defender of each judicial district, the administrative office of the courts, any law enforcement agency, any juvenile court officer or investigator, any representative of the mental health disciplines involved in investigations conducted by child protective teams, and any other state agency shall, upon request by the commission:

(1) Submit to the commission, in accordance with the procedures and deadlines established by the commission, information and data concerning a second or subsequent incident of severe abuse;

(2) Cause the person most knowledgeable with the case being examined to testify regarding any cases concerning a second or subsequent incident of severe abuse; and

(3) Make recommendations and identify where gaps and deficiencies may exist in the various systems involved in protecting children from severe child abuse.

§ 37-3-810.

(a) Notwithstanding any provision of law to the contrary, the commission may access information made confidential pursuant to title 37, part 1.

(b)

(1) Except as provided in subsection (c), investigatory meetings of the commission shall not be subject to the provisions of title 8, chapter 44, part 1 and shall be closed to the public. Any minutes or other information made confidential pursuant to state or federal law and generated during an investigatory meeting shall be sealed from public inspection; provided that the commission shall comply with the provisions of subsection (c).

(2) Each statutory member of the commission and each person otherwise attending an investigatory meeting shall sign a statement prepared by the commission indicating and affirming an understanding of and adherence to the confidentiality requirements, including the possible civil or criminal consequences of any violation or breach of such requirements.

(c) Notwithstanding the provisions of subsection (b), the commission shall conduct meetings that are open to the public to periodically make available, in a general manner that does not reveal information made confidential pursuant to state or federal law, the aggregate findings of its reviews and its recommendations.

(d) All information made confidential pursuant to state or federal law acquired by the commission in the exercise of its duties:

(1) Remains confidential after being acquired by the commission;

(2) Is not subject to discovery or introduction into evidence in any criminal or civil proceedings; and

(3) May only be disclosed as necessary to carry out the purposes of this part.

(e) Subsection (d) shall not prohibit a person from testifying in a civil or criminal action about matters within such person's knowledge that was obtained independently from any commission meeting.

§ 37-3-811.

To the extent that funds are available, the commission may hire additional staff or consultants to assist the commission in completing its duties.

§ 37-3-812.

Any person acting in good faith in compliance with this part shall be immune from civil and criminal liability arising from such action.

§ 37-3-813.

Nothing in this part shall preclude any investigations or reviews to the extent authorized by other laws.

§ 37-3-814.

If, during the course of the commission's duties under this part, the commission becomes aware of any violations of the criminal laws of this state by any person or agency, the co-chairs of the commission shall share such information with appropriate officials charged with investigating criminal matters.

§ 37-3-815.

The commission shall adopt and implement a policy related to conflicts of interest, to ensure that all members avoid any situation that creates an actual or perceived conflict of interest related to the work of the commission.

SECTION 2. Tennessee Code Annotated, Section 4-29-233(a), is amended by inserting the following language as a new, appropriately designated subdivision:

( ) Second look commission, created by § 37-3-803;

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 9, 2010

KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 21st day of June 2010

PHIL BREDESEN, GOVERNOR