

Addendum 1

Updated Texas Family Code: Definition of Abuse

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship

Subtitle E. Protection of the Child

Chapter 261. Investigation of Report of Child Abuse or Neglect

Subchapter A. General Provisions

- (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 continuous sexual abuse of young child or children under Section 21.02, Penal Code, 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, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b) 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), 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;
- (K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or
- (L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

(2) "Department" means the Department of Family and Protective Services.

(3) Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.203(4).

(4) "Neglect":

(A) includes:

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;

(ii) the following acts or omissions by a person:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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
- (e) 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

(iii) committed against another child; or

- (a) 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; and

(B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

- (i) the child has a severe emotional disturbance
- (ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
- (iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).

(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) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.203(4).

(9) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.