

By: Zaffirini

S.B. No. 1611

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the definitions of abuse and neglect of a child.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 71.004, Family Code, is amended to read  
5 as follows:

6 Sec. 71.004. FAMILY VIOLENCE. "Family violence" means:

7 (1) an act by a member of a family or household against  
8 another member of the family or household that is intended to result  
9 in physical harm, bodily injury, assault, or sexual assault or that  
10 is a threat that reasonably places the member in fear of imminent  
11 physical harm, bodily injury, assault, or sexual assault, but does  
12 not include defensive measures to protect oneself;

13 (2) abuse, as that term is defined by Sections  
14 261.001(1)(A)(iii), (v), (vii), (viii), (ix), (x), (xi), and (xiii)  
15 [~~261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M)~~], by a member  
16 of a family or household toward a child of the family or household;  
17 or

18 (3) dating violence, as that term is defined by  
19 Section 71.0021.

20 SECTION 2. Section 261.001(1), Family Code, is amended to  
21 read as follows:

22 (1) "Abuse" includes:

23 (A) the following acts or omissions by a person:

24 (i) [~~(A)~~] mental or emotional injury to a

1 child that results in an observable and material impairment in the  
2 child's growth, development, or psychological functioning;

3 (ii) [~~(B)~~] causing or permitting the child  
4 to be in a situation in which the child sustains a mental or  
5 emotional injury that results in an observable and material  
6 impairment in the child's growth, development, or psychological  
7 functioning;

8 (iii) [~~(C)~~] physical injury that results in  
9 substantial harm to the child, or the genuine threat of substantial  
10 harm from physical injury to the child, including an injury that is  
11 at variance with the history or explanation given and excluding an  
12 accident or reasonable discipline by a parent, guardian, or  
13 managing or possessory conservator that does not expose the child  
14 to a substantial risk of harm;

15 (iv) [~~(D)~~] failure to make a reasonable  
16 effort to prevent an action by another person that results in  
17 physical injury that results in substantial harm to the child;

18 (v) [~~(E)~~] sexual conduct harmful to a  
19 child's mental, emotional, or physical welfare, including conduct  
20 that constitutes the offense of continuous sexual abuse of young  
21 child or disabled individual under Section 21.02, Penal Code,  
22 indecency with a child under Section 21.11, Penal Code, sexual  
23 assault under Section 22.011, Penal Code, or aggravated sexual  
24 assault under Section 22.021, Penal Code;

25 (vi) [~~(F)~~] failure to make a reasonable  
26 effort to prevent sexual conduct harmful to a child;

27 (vii) [~~(G)~~] compelling or encouraging the

1 child to engage in sexual conduct as defined by Section 43.01, Penal  
2 Code, including compelling or encouraging the child in a manner  
3 that constitutes an offense of trafficking of persons under Section  
4 20A.02(a)(7) or (8), Penal Code, solicitation of prostitution under  
5 Section 43.021, Penal Code, or compelling prostitution under  
6 Section 43.05(a)(2), Penal Code;

7                    (viii) [~~(H)~~] causing,                    permitting,  
8 encouraging, engaging in, or allowing the photographing, filming,  
9 or depicting of the child if the person knew or should have known  
10 that the resulting photograph, film, or depiction of the child is  
11 obscene as defined by Section 43.21, Penal Code, or pornographic;

12                    (ix) [~~(I)~~] the current use by a person of a  
13 controlled substance as defined by Chapter 481, Health and Safety  
14 Code, in a manner or to the extent that the use results in physical,  
15 mental, or emotional injury to a child;

16                    (x) [~~(J)~~] causing, expressly permitting,  
17 or encouraging a child to use a controlled substance as defined by  
18 Chapter 481, Health and Safety Code;

19                    (xi) [~~(K)~~] causing,                    permitting,  
20 encouraging, engaging in, or allowing a sexual performance by a  
21 child as defined by Section 43.25, Penal Code;

22                    (xii) [~~(L)~~] knowingly causing, permitting,  
23 encouraging, engaging in, or allowing a child to be trafficked in a  
24 manner punishable as an offense under Section 20A.02(a)(5), (6),  
25 (7), or (8), Penal Code, or the failure to make a reasonable effort  
26 to prevent a child from being trafficked in a manner punishable as  
27 an offense under any of those sections; or

1                    (xiii) [~~(M)~~] forcing or coercing a child to  
2 enter into a marriage; and

3                    (B) an employee, volunteer, or other individual  
4 working under the auspices of a school, facility, or program using a  
5 form of restraint on a child or secluding a child in a manner that  
6 does not comply with federal law, state law, state rules, or other  
7 applicable regulations for the school, facility, or program.

8            SECTION 3. Section 261.001(4), Family Code, as amended by  
9 Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th  
10 Legislature, Regular Session, 2021, is reenacted and amended to  
11 read as follows:

12                    (4) "Neglect" means an act or failure to act by a  
13 person responsible for a child's care, custody, or welfare  
14 evidencing the person's blatant disregard for the consequences of  
15 the act or failure to act that results in harm to the child or that  
16 creates an immediate danger to the child's physical health or  
17 safety and:

18                    (A) includes:

19                    (i) the leaving of a child in a situation  
20 where the child would be exposed to an immediate danger of physical  
21 or mental harm, without arranging for necessary care for the child,  
22 and the demonstration of an intent not to return by a parent,  
23 guardian, or managing or possessory conservator of the child;

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

26                    (a) placing a child in or failing to  
27 remove a child from a situation that a reasonable person would

1 realize requires judgment or actions beyond the child's level of  
2 maturity, physical condition, or mental abilities and that results  
3 in bodily injury or an immediate danger of harm to the child;

4 (b) failing to seek, obtain, or follow  
5 through with medical care for a child, with the failure resulting in  
6 or presenting an immediate danger of death, disfigurement, or  
7 bodily injury or with the failure resulting in an observable and  
8 material impairment to the growth, development, or functioning of  
9 the child;

10 (c) the failure to provide a child  
11 with food, clothing, or shelter necessary to sustain the life or  
12 health of the child, excluding failure caused primarily by  
13 financial inability unless relief services had been offered and  
14 refused;

15 (d) placing a child in or failing to  
16 remove the child from a situation in which the child would be  
17 exposed to an immediate danger of sexual conduct harmful to the  
18 child; or

19 (e) placing a child in or failing to  
20 remove the child from a situation in which the child would be  
21 exposed to acts or omissions that constitute abuse under  
22 Subdivision (1)(A)(v), (vi), (vii), (viii), or (xi) [~~(1)(E), (F),~~  
23 ~~(G), (H), or (K)~~] committed against another child;

24 (iii) the failure by the person responsible  
25 for a child's care, custody, or welfare to permit the child to  
26 return to the child's home without arranging for the necessary care  
27 for the child after the child has been absent from the home for any

1 reason, including having been in residential placement or having  
2 run away; or

3 (iv) a negligent act or omission by an  
4 employee, volunteer, or other individual working under the auspices  
5 of a school, facility, or program, including failure to comply with  
6 an individual treatment plan, plan of care, or individualized  
7 service plan, that causes or may cause substantial emotional harm  
8 or physical injury to, or the death of, a child served by the  
9 school, facility, or program as further described by rule or  
10 policy; and

11 (B) does not include:

12 (i) the refusal by a person responsible for  
13 a child's care, custody, or welfare to permit the child to remain in  
14 or return to the child's home resulting in the placement of the  
15 child in the conservatorship of the department if:

16 (a) the child has a severe emotional  
17 disturbance;

18 (b) the person's refusal is based  
19 solely on the person's inability to obtain mental health services  
20 necessary to protect the safety and well-being of the child; and

21 (c) the person has exhausted all  
22 reasonable means available to the person to obtain the mental  
23 health services described by Sub-subparagraph (b); ~~or~~

24 (ii) allowing the child to engage in  
25 independent activities that are appropriate and typical for the  
26 child's level of maturity, physical condition, developmental  
27 abilities, or culture; or

1                    (iii) [~~(ii)~~] a decision by a person  
2 responsible for a child's care, custody, or welfare to:

3                    (a) obtain an opinion from more than  
4 one medical provider relating to the child's medical care;

5                    (b) transfer the child's medical care  
6 to a new medical provider; or

7                    (c) transfer the child to another  
8 health care facility.

9            SECTION 4. To the extent of any conflict, this Act prevails  
10 over another Act of the 88th Legislature, Regular Session, 2023,  
11 relating to nonsubstantive additions to and corrections in enacted  
12 codes.

13            SECTION 5. This Act takes effect September 1, 2023.