

By: Perry

S.B. No. 1182

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution, punishment, and certain civil consequences of conduct causing the birth of a child born addicted to a controlled substance; creating an offense.

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

SECTION 1. Chapter 22, Penal Code, is amended by adding Section 22.042 to read as follows:

Sec. 22.042. INGESTION OF CONTROLLED SUBSTANCE WHILE PREGNANT. (a) In this section:

(1) "Born addicted to a controlled substance" means a child who, during the first month after birth:

(A) experiences observable withdrawal from a controlled substance;

(B) exhibits observable or harmful effects in the child's physical appearance or functioning attributable to addiction to a controlled substance; or

(C) exhibits the demonstrable presence of a controlled substance in the child's bodily fluids.

(2) "Controlled substance" and "prescription" have the meanings assigned by Section 481.002, Health and Safety Code.

(b) A person commits an offense if the person ingests a controlled substance while pregnant, resulting in the birth of a child who is born addicted to a controlled substance.

(c) It is a defense to prosecution under this section that

the child was born addicted to a controlled substance that the actor ingested pursuant to a prescription issued by a licensed physician.

(d) It is a defense to prosecution under this section that the actor attended counseling sessions for substance abusers or participated in substance abuse treatment services while pregnant with the child who is born addicted to a controlled substance.

(e) An offense under this section is a Class A misdemeanor.

(f) The enhancements provided by Sections [12.43](#) and [12.49](#) do not apply to an offense under this section.

SECTION 2. Subchapter C, Chapter [42A](#), Code of Criminal Procedure, is amended by adding Article 42A.1011 to read as follows:

Art. 42A.1011. DEFERRED ADJUDICATION COMMUNITY SUPERVISION OR COMMUNITY SUPERVISION FOR INGESTION OF CONTROLLED SUBSTANCE WHILE PREGNANT. (a) Except as provided by Subsection (b), if a defendant is determined in a trial on the merits to have committed an offense under Section 22.042, Penal Code, or in the trial of such an offense the defendant enters a plea of guilty or nolo contendere and, after hearing the evidence, the judge finds that it substantiates the defendant's guilt, the judge shall:

(1) defer further proceedings without entering an adjudication of guilt;

(2) place the defendant on deferred adjudication community supervision; and

(3) inform the defendant orally or in writing of the possible consequences under Articles [42A.108](#) and [42A.110](#) of a violation of a condition of deferred adjudication community

1 supervision.

2 (b) If the information provided to the defendant under  
3 Subsection (a)(3) is provided orally, the judge must record and  
4 maintain the judge's statement to the defendant. The failure of a  
5 judge to inform a defendant of possible consequences under Articles  
6 42A.108 and 42A.110 is not a ground for reversal unless the  
7 defendant shows that the defendant was harmed by the failure of the  
8 judge to provide the information.

9 (c) If a defendant has previously been placed on deferred  
10 adjudication community supervision under this section, on  
11 conviction or after receiving a plea of guilty or nolo contendere,  
12 after hearing the evidence and finding that it substantiates the  
13 defendant's guilt, the judge shall place the defendant on community  
14 supervision.

15 (d) A judge who places a defendant on deferred adjudication  
16 community supervision under Subsection (a) or community  
17 supervision under Subsection (c) shall require the defendant, as a  
18 condition of community supervision, to attend counseling sessions  
19 for substance abusers or participate in substance abuse treatment  
20 services in a program or facility approved or licensed by the  
21 Department of State Health Services.

22 SECTION 3. Section 261.001(1), Family Code, is amended to  
23 read as follows:

24 (1) "Abuse" includes the following acts or omissions  
25 by a person:

26 (A) mental or emotional injury to a child that  
27 results in an observable and material impairment in the child's

1 growth, development, or psychological functioning;

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

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

13 (D) failure to make a reasonable effort to  
14 prevent an action by another person that results in physical injury  
15 that results in substantial harm to the child;

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

23 (F) failure to make a reasonable effort to  
24 prevent sexual conduct harmful to a child;

25 (G) compelling or encouraging the child to engage  
26 in sexual conduct as defined by Section 43.01, Penal Code,  
27 including compelling or encouraging the child in a manner that

1 constitutes an offense of trafficking of persons under Section  
2 20A.02(a)(7) or (8), Penal Code, prostitution under Section  
3 43.02(b), Penal Code, or compelling prostitution under Section  
4 43.05(a)(2), Penal Code;

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

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

14 (J) causing, expressly permitting, or  
15 encouraging a child to use a controlled substance as defined by  
16 Chapter 481, Health and Safety Code;

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

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

26 (M) allowing a child to be born addicted to a  
27 controlled substance, as defined by Section 22.042, Penal Code.

SECTION 4. Section 262.102, Family Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) In determining whether there is an immediate danger to the physical health or safety of a child who is younger than one year of age, the court may consider whether the child was the subject of abuse described by Section 261.001(1)(M).

SECTION 5. Section 262.104, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) If there is no time to obtain a temporary order, temporary restraining order, or attachment under Section 262.102(a) before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section

1 20A.02 or 20A.03, Penal Code;

2 (4) on information furnished by another that has been  
3 corroborated by personal knowledge of facts and all of which taken  
4 together would lead a person of ordinary prudence and caution to  
5 believe that the child has been the victim of sexual abuse or of  
6 trafficking under Section 20A.02 or 20A.03, Penal Code; ~~or~~

7 (5) on information furnished by another that has been  
8 corroborated by personal knowledge of facts and all of which taken  
9 together would lead a person of ordinary prudence and caution to  
10 believe that the parent or person who has possession of the child is  
11 currently using a controlled substance as defined by Chapter 481,  
12 Health and Safety Code, and the use constitutes an immediate danger  
13 to the physical health or safety of the child; or

14 (6) if the child is younger than one year of age, on  
15 information furnished by another that has been corroborated by  
16 personal knowledge of facts and all of which taken together would  
17 lead a person of ordinary prudence and caution to believe that the  
18 child was born addicted to a controlled substance, as defined by  
19 Section 22.042, Penal Code, and there is an immediate danger to the  
20 physical health or safety of the child.

21 (c) An authorized representative of the Department of  
22 Family and Protective Services, a law enforcement officer, or a  
23 juvenile probation officer who takes possession of a child without  
24 a court order under a condition described by Subsection (a)(6) must  
25 report the facts that supported taking possession of the child to  
26 the local prosecutor with jurisdiction over an offense under  
27 Section 22.042, Penal Code.

1           SECTION 6. The change in law made by this Act to Section  
2   261.001, Family Code, applies only to an investigation of child  
3   abuse alleged to have occurred on or after the effective date of  
4   this Act.

5           SECTION 7. This Act takes effect September 1, 2017.