

By: Davis of Dallas

H.B. No. 2874

A BILL TO BE ENTITLED

AN ACT

relating to the criminal offense of abandoning or endangering a child, elderly individual, or disabled individual.

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

SECTION 1. Section 22.041, Penal Code, is amended to read as follows:

Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Abandon" [~~,"abandon"~~] means to leave [~~a child~~] in any place without providing reasonable and necessary care a [~~for the~~] child, elderly individual, or disabled individual under circumstances under which no reasonable, similarly situated person [~~adult~~] would leave a child or individual of that age and ability.

(2) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(b) A person commits an offense if the person, having custody, care, or control of a child, elderly individual, or disabled individual [~~younger than 15 years~~], [~~he~~] intentionally abandons the child or individual in any place under circumstances that expose the child or individual to an unreasonable risk of harm.

(c) A person commits an offense if the person [~~he~~] intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child, elderly individual, or disabled individual [~~younger than 15 years~~] in

1 imminent danger of death, bodily injury, or physical or mental
2 impairment.

3 (c-1) For purposes of Subsection (c), it is presumed that a
4 person engaged in conduct that places a child, elderly individual,
5 or disabled individual in imminent danger of death, bodily injury,
6 or physical or mental impairment if:

7 (1) the person manufactured, possessed, or in any way
8 introduced into the body of any person the controlled substance
9 methamphetamine in the presence of the child, elderly individual,
10 or disabled individual;

11 (2) the person's conduct related to the proximity or
12 accessibility of the controlled substance methamphetamine to the
13 child, elderly individual, or disabled individual and an analysis
14 of a specimen of the child's or individual's blood, urine, or other
15 bodily substance indicates the presence of methamphetamine in the
16 body of the child or individual [~~child's body~~]; or

17 (3) the person injected, ingested, inhaled, or
18 otherwise introduced a controlled substance listed in Penalty Group
19 1, Section 481.102, Health and Safety Code, into the human body when
20 the person was not in lawful possession of the substance as defined
21 by Section 481.002(24) of that code.

22 (d) Except as provided by Subsection (e), an offense under
23 Subsection (b) is:

24 (1) a state jail felony if the actor abandoned the
25 child, elderly individual, or disabled individual with intent to
26 return for the child or individual; or

27 (2) a felony of the third degree if the actor abandoned

1 the child, elderly individual, or disabled individual without
2 intent to return for the child or individual.

3 (e) An offense under Subsection (b) is a felony of the
4 second degree if the actor abandons the child, elderly individual,
5 or disabled individual under circumstances that a reasonable person
6 would believe would place the child or individual in imminent
7 danger of death, bodily injury, or physical or mental impairment.

8 (f) An offense under Subsection (c) is a state jail felony.

9 (g) It is a defense to prosecution under Subsection (c) that
10 the act or omission enables the child, elderly individual, or
11 disabled individual to practice for or participate in an organized
12 athletic event and that appropriate safety equipment and procedures
13 are employed in the event.

14 (h) It is an exception to the application of this section
15 that the actor voluntarily delivered a a [~~the~~] child to a designated
16 emergency infant care provider under Section 262.302, Family Code.

17 SECTION 2. Section 201.062(a), Estates Code, is amended to
18 read as follows:

19 (a) A probate court may enter an order declaring that the
20 parent of a child under 18 years of age may not inherit from or
21 through the child under the laws of descent and distribution if the
22 court finds by clear and convincing evidence that the parent has:

23 (1) voluntarily abandoned and failed to support the
24 child in accordance with the parent's obligation or ability for at
25 least three years before the date of the child's death, and did not
26 resume support for the child before that date;

27 (2) voluntarily and with knowledge of the pregnancy:

1 (A) abandoned the child's mother beginning at a
2 time during her pregnancy with the child and continuing through the
3 birth;

4 (B) failed to provide adequate support or medical
5 care for the mother during the period of abandonment before the
6 child's birth; and

7 (C) remained apart from and failed to support the
8 child since birth; or

9 (3) been convicted or has been placed on community
10 supervision, including deferred adjudication community
11 supervision, for being criminally responsible for the death or
12 serious injury of a child under the following sections of the Penal
13 Code or adjudicated under Title 3, Family Code, for conduct that
14 caused the death or serious injury of a child and that would
15 constitute a violation of one of the following sections of the Penal
16 Code:

- 17 (A) Section 19.02 (murder);
- 18 (B) Section 19.03 (capital murder);
- 19 (C) Section 19.04 (manslaughter);
- 20 (D) Section 21.11 (indecent with a child);
- 21 (E) Section 22.01 (assault);
- 22 (F) Section 22.011 (sexual assault);
- 23 (G) Section 22.02 (aggravated assault);
- 24 (H) Section 22.021 (aggravated sexual assault);
- 25 (I) Section 22.04 (injury to a child, elderly
26 individual, or disabled individual);
- 27 (J) Section 22.041 (abandoning or endangering a

1 child, elderly individual, or disabled individual);

2 (K) Section 25.02 (prohibited sexual conduct);

3 (L) Section 43.25 (sexual performance by a
4 child); or

5 (M) Section 43.26 (possession or promotion of
6 child pornography).

7 SECTION 3. Section 161.001(b), Family Code, is amended to
8 read as follows:

9 (b) The court may order termination of the parent-child
10 relationship if the court finds by clear and convincing evidence:

11 (1) that the parent has:

12 (A) voluntarily left the child alone or in the
13 possession of another not the parent and expressed an intent not to
14 return;

15 (B) voluntarily left the child alone or in the
16 possession of another not the parent without expressing an intent
17 to return, without providing for the adequate support of the child,
18 and remained away for a period of at least three months;

19 (C) voluntarily left the child alone or in the
20 possession of another without providing adequate support of the
21 child and remained away for a period of at least six months;

22 (D) knowingly placed or knowingly allowed the
23 child to remain in conditions or surroundings which endanger the
24 physical or emotional well-being of the child;

25 (E) engaged in conduct or knowingly placed the
26 child with persons who engaged in conduct which endangers the
27 physical or emotional well-being of the child;

1 (F) failed to support the child in accordance
2 with the parent's ability during a period of one year ending within
3 six months of the date of the filing of the petition;

4 (G) abandoned the child without identifying the
5 child or furnishing means of identification, and the child's
6 identity cannot be ascertained by the exercise of reasonable
7 diligence;

8 (H) voluntarily, and with knowledge of the
9 pregnancy, abandoned the mother of the child beginning at a time
10 during her pregnancy with the child and continuing through the
11 birth, failed to provide adequate support or medical care for the
12 mother during the period of abandonment before the birth of the
13 child, and remained apart from the child or failed to support the
14 child since the birth;

15 (I) contumaciously refused to submit to a
16 reasonable and lawful order of a court under Subchapter D, Chapter
17 [261](#);

18 (J) been the major cause of:

19 (i) the failure of the child to be enrolled
20 in school as required by the Education Code; or

21 (ii) the child's absence from the child's
22 home without the consent of the parents or guardian for a
23 substantial length of time or without the intent to return;

24 (K) executed before or after the suit is filed an
25 unrevoked or irrevocable affidavit of relinquishment of parental
26 rights as provided by this chapter;

27 (L) been convicted or has been placed on

1 community supervision, including deferred adjudication community
2 supervision, for being criminally responsible for the death or
3 serious injury of a child under the following sections of the Penal
4 Code, or under a law of another jurisdiction that contains elements
5 that are substantially similar to the elements of an offense under
6 one of the following Penal Code sections, or adjudicated under
7 Title 3 for conduct that caused the death or serious injury of a
8 child and that would constitute a violation of one of the following
9 Penal Code sections:

- 10 (i) Section 19.02 (murder);
- 11 (ii) Section 19.03 (capital murder);
- 12 (iii) Section 19.04 (manslaughter);
- 13 (iv) Section 21.11 (indecent with a
14 child);
- 15 (v) Section 22.01 (assault);
- 16 (vi) Section 22.011 (sexual assault);
- 17 (vii) Section 22.02 (aggravated assault);
- 18 (viii) Section 22.021 (aggravated sexual
19 assault);
- 20 (ix) Section 22.04 (injury to a child,
21 elderly individual, or disabled individual);
- 22 (x) Section 22.041 (abandoning or
23 endangering a child, elderly individual, or disabled individual);
- 24 (xi) Section 25.02 (prohibited sexual
25 conduct);
- 26 (xii) Section 43.25 (sexual performance by
27 a child);

1 (xiii) Section 43.26 (possession or
2 promotion of child pornography);

3 (xiv) Section 21.02 (continuous sexual
4 abuse of young child or children);

5 (xv) Section 20A.02(a)(7) or (8)
6 (trafficking of persons); and

7 (xvi) Section 43.05(a)(2) (compelling
8 prostitution);

9 (M) had his or her parent-child relationship
10 terminated with respect to another child based on a finding that the
11 parent's conduct was in violation of Paragraph (D) or (E) or
12 substantially equivalent provisions of the law of another state;

13 (N) constructively abandoned the child who has
14 been in the permanent or temporary managing conservatorship of the
15 Department of Family and Protective Services for not less than six
16 months, and:

17 (i) the department has made reasonable
18 efforts to return the child to the parent;

19 (ii) the parent has not regularly visited
20 or maintained significant contact with the child; and

21 (iii) the parent has demonstrated an
22 inability to provide the child with a safe environment;

23 (O) failed to comply with the provisions of a
24 court order that specifically established the actions necessary for
25 the parent to obtain the return of the child who has been in the
26 permanent or temporary managing conservatorship of the Department
27 of Family and Protective Services for not less than nine months as a

1 result of the child's removal from the parent under Chapter 262 for
2 the abuse or neglect of the child;

3 (P) used a controlled substance, as defined by
4 Chapter 481, Health and Safety Code, in a manner that endangered the
5 health or safety of the child, and:

6 (i) failed to complete a court-ordered
7 substance abuse treatment program; or

8 (ii) after completion of a court-ordered
9 substance abuse treatment program, continued to abuse a controlled
10 substance;

11 (Q) knowingly engaged in criminal conduct that
12 has resulted in the parent's:

13 (i) conviction of an offense; and

14 (ii) confinement or imprisonment and
15 inability to care for the child for not less than two years from the
16 date of filing the petition;

17 (R) been the cause of the child being born
18 addicted to alcohol or a controlled substance, other than a
19 controlled substance legally obtained by prescription;

20 (S) voluntarily delivered the child to a
21 designated emergency infant care provider under Section 262.302
22 without expressing an intent to return for the child;

23 (T) been convicted of:

24 (i) the murder of the other parent of the
25 child under Section 19.02 or 19.03, Penal Code, or under a law of
26 another state, federal law, the law of a foreign country, or the
27 Uniform Code of Military Justice that contains elements that are

1 substantially similar to the elements of an offense under Section
2 19.02 or 19.03, Penal Code;

3 (ii) criminal attempt under Section 15.01,
4 Penal Code, or under a law of another state, federal law, the law of
5 a foreign country, or the Uniform Code of Military Justice that
6 contains elements that are substantially similar to the elements of
7 an offense under Section 15.01, Penal Code, to commit the offense
8 described by Subparagraph (i);

9 (iii) criminal solicitation under Section
10 15.03, Penal Code, or under a law of another state, federal law, the
11 law of a foreign country, or the Uniform Code of Military Justice
12 that contains elements that are substantially similar to the
13 elements of an offense under Section 15.03, Penal Code, of the
14 offense described by Subparagraph (i); or

15 (iv) the sexual assault of the other parent
16 of the child under Section 22.011 or 22.021, Penal Code, or under a
17 law of another state, federal law, or the Uniform Code of Military
18 Justice that contains elements that are substantially similar to
19 the elements of an offense under Section 22.011 or 22.021, Penal
20 Code; or

21 (U) been placed on community supervision,
22 including deferred adjudication community supervision, or another
23 functionally equivalent form of community supervision or
24 probation, for being criminally responsible for the sexual assault
25 of the other parent of the child under Section 22.011 or 22.021,
26 Penal Code, or under a law of another state, federal law, or the
27 Uniform Code of Military Justice that contains elements that are

1 substantially similar to the elements of an offense under Section
2 22.011 or 22.021, Penal Code; and

3 (2) that termination is in the best interest of the
4 child.

5 SECTION 4. Section 262.2015(b), Family Code, is amended to
6 read as follows:

7 (b) The court may find under Subsection (a) that a parent
8 has subjected the child to aggravated circumstances if:

9 (1) the parent abandoned the child without
10 identification or a means for identifying the child;

11 (2) the child or another child of the parent is a
12 victim of serious bodily injury or sexual abuse inflicted by the
13 parent or by another person with the parent's consent;

14 (3) the parent has engaged in conduct against the
15 child or another child of the parent that would constitute an
16 offense under the following provisions of the Penal Code:

17 (A) Section 19.02 (murder);

18 (B) Section 19.03 (capital murder);

19 (C) Section 19.04 (manslaughter);

20 (D) Section 21.11 (indecent with a child);

21 (E) Section 22.011 (sexual assault);

22 (F) Section 22.02 (aggravated assault);

23 (G) Section 22.021 (aggravated sexual assault);

24 (H) Section 22.04 (injury to a child, elderly
25 individual, or disabled individual);

26 (I) Section 22.041 (abandoning or endangering a
27 child, elderly individual, or disabled individual);

1 (J) Section 25.02 (prohibited sexual conduct);

2 (K) Section 43.25 (sexual performance by a
3 child);

4 (L) Section 43.26 (possession or promotion of
5 child pornography);

6 (M) Section 21.02 (continuous sexual abuse of
7 young child or children);

8 (N) Section 43.05(a)(2) (compelling
9 prostitution); or

10 (O) Section 20A.02(a)(7) or (8) (trafficking of
11 persons);

12 (4) the parent voluntarily left the child alone or in
13 the possession of another person not the parent of the child for at
14 least six months without expressing an intent to return and without
15 providing adequate support for the child;

16 (5) the parent's parental rights with regard to
17 another child have been involuntarily terminated based on a finding
18 that the parent's conduct violated Section 161.001(b)(1)(D) or (E)
19 or a substantially equivalent provision of another state's law;

20 (6) the parent has been convicted for:

21 (A) the murder of another child of the parent and
22 the offense would have been an offense under 18 U.S.C. Section
23 1111(a) if the offense had occurred in the special maritime or
24 territorial jurisdiction of the United States;

25 (B) the voluntary manslaughter of another child
26 of the parent and the offense would have been an offense under 18
27 U.S.C. Section 1112(a) if the offense had occurred in the special

1 maritime or territorial jurisdiction of the United States;

2 (C) aiding or abetting, attempting, conspiring,
3 or soliciting an offense under Paragraph (A) or (B); or

4 (D) the felony assault of the child or another
5 child of the parent that resulted in serious bodily injury to the
6 child or another child of the parent;

7 (7) the parent's parental rights with regard to
8 another child of the parent have been involuntarily terminated; or

9 (8) the parent is required under any state or federal
10 law to register with a sex offender registry.

11 SECTION 5. Section 250.006(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) A person for whom the facility or the individual
14 employer is entitled to obtain criminal history record information
15 may not be employed in a facility or by an individual employer if
16 the person has been convicted of an offense listed in this
17 subsection:

18 (1) an offense under Chapter 19, Penal Code (criminal
19 homicide);

20 (2) an offense under Chapter 20, Penal Code
21 (kidnapping, unlawful restraint, and smuggling of persons);

22 (3) an offense under Section 21.02, Penal Code
23 (continuous sexual abuse of young child or children), or Section
24 21.11, Penal Code (indecent with a child);

25 (4) an offense under Section 22.011, Penal Code
26 (sexual assault);

27 (5) an offense under Section 22.02, Penal Code

- 1 (aggravated assault);
- 2 (6) an offense under Section 22.04, Penal Code (injury
3 to a child, elderly individual, or disabled individual);
- 4 (7) an offense under Section 22.041, Penal Code
5 (abandoning or endangering a child, elderly individual, or disabled
6 individual);
- 7 (8) an offense under Section 22.08, Penal Code (aiding
8 suicide);
- 9 (9) an offense under Section 25.031, Penal Code
10 (agreement to abduct from custody);
- 11 (10) an offense under Section 25.08, Penal Code (sale
12 or purchase of child);
- 13 (11) an offense under Section 28.02, Penal Code
14 (arson);
- 15 (12) an offense under Section 29.02, Penal Code
16 (robbery);
- 17 (13) an offense under Section 29.03, Penal Code
18 (aggravated robbery);
- 19 (14) an offense under Section 21.08, Penal Code
20 (indecent exposure);
- 21 (15) an offense under Section 21.12, Penal Code
22 (improper relationship between educator and student);
- 23 (16) an offense under Section 21.15, Penal Code
24 (improper photography or visual recording);
- 25 (17) an offense under Section 22.05, Penal Code
26 (deadly conduct);
- 27 (18) an offense under Section 22.021, Penal Code

1 (aggravated sexual assault);

2 (19) an offense under Section 22.07, Penal Code
3 (terroristic threat);

4 (20) an offense under Section 32.53, Penal Code
5 (exploitation of child, elderly individual, or disabled
6 individual);

7 (21) an offense under Section 33.021, Penal Code
8 (online solicitation of a minor);

9 (22) an offense under Section 34.02, Penal Code (money
10 laundering);

11 (23) an offense under Section 35A.02, Penal Code
12 (Medicaid fraud);

13 (24) an offense under Section 36.06, Penal Code
14 (obstruction or retaliation);

15 (25) an offense under Section 42.09, Penal Code
16 (cruelty to livestock animals), or under Section 42.092, Penal Code
17 (cruelty to nonlivestock animals); or

18 (26) a conviction under the laws of another state,
19 federal law, or the Uniform Code of Military Justice for an offense
20 containing elements that are substantially similar to the elements
21 of an offense listed by this subsection.

22 SECTION 6. Section 301.4535(a), Occupations Code, is
23 amended to read as follows:

24 (a) The board shall suspend a nurse's license or refuse to
25 issue a license to an applicant on proof that the nurse or applicant
26 has been initially convicted of:

27 (1) murder under Section 19.02, Penal Code, capital

1 murder under Section 19.03, Penal Code, or manslaughter under
2 Section 19.04, Penal Code;

3 (2) kidnapping or unlawful restraint under Chapter 20,
4 Penal Code, and the offense was punished as a felony or state jail
5 felony;

6 (3) sexual assault under Section 22.011, Penal Code;

7 (4) aggravated sexual assault under Section 22.021,
8 Penal Code;

9 (5) continuous sexual abuse of young child or children
10 under Section 21.02, Penal Code, or indecency with a child under
11 Section 21.11, Penal Code;

12 (6) aggravated assault under Section 22.02, Penal
13 Code;

14 (7) intentionally, knowingly, or recklessly injuring
15 a child, elderly individual, or disabled individual under Section
16 22.04, Penal Code;

17 (8) intentionally, knowingly, or recklessly
18 abandoning or endangering a child, elderly individual, or disabled
19 individual under Section 22.041, Penal Code;

20 (9) aiding suicide under Section 22.08, Penal Code,
21 and the offense was punished as a state jail felony;

22 (10) an offense involving a violation of certain court
23 orders or conditions of bond under Section 25.07, 25.071, or
24 25.072, Penal Code, punished as a felony;

25 (11) an agreement to abduct a child from custody under
26 Section 25.031, Penal Code;

27 (12) the sale or purchase of a child under Section

1 25.08, Penal Code;

2 (13) robbery under Section 29.02, Penal Code;

3 (14) aggravated robbery under Section 29.03, Penal
4 Code;

5 (15) an offense for which a defendant is required to
6 register as a sex offender under Chapter 62, Code of Criminal
7 Procedure; or

8 (16) an offense under the law of another state,
9 federal law, or the Uniform Code of Military Justice that contains
10 elements that are substantially similar to the elements of an
11 offense listed in this subsection.

12 SECTION 7. The changes in law made by this Act apply only to
13 an offense committed on or after the effective date of this Act. An
14 offense committed before the effective date of this Act is governed
15 by the law in effect on the date the offense was committed, and the
16 former law is continued in effect for that purpose. For purposes of
17 this section, an offense was committed before the effective date of
18 this Act if any element of the offense was committed before that
19 date.

20 SECTION 8. This Act takes effect September 1, 2019.