

By: Toth

H.B. No. 38

A BILL TO BE ENTITLED

AN ACT

relating to the definition of abuse of a child.

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

SECTION 1. Section 261.001, Family Code, as amended by H.B. No. 375 and H.B. No. 1540, Acts of the 87th Legislature, Regular Session, 2021, as effective September 1, 2021, is reenacted and amended to read as follows:

(1) "Abuse":

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

(i) [~~(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;

(ii) [~~(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;

(iii) [~~(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

1 to a substantial risk of harm;

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

5 (v) [~~(E)~~] sexual conduct harmful to a  
6 child's mental, emotional, or physical welfare, including conduct  
7 that constitutes the offense of continuous sexual abuse of young  
8 child or disabled individual under Section 21.02, Penal Code,  
9 indecency with a child under Section 21.11, Penal Code, sexual  
10 assault under Section 22.011, Penal Code, or aggravated sexual  
11 assault under Section 22.021, Penal Code;

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

14 (vii) [~~(G)~~] compelling or encouraging the  
15 child to engage in sexual conduct as defined by Section 43.01, Penal  
16 Code, including compelling or encouraging the child in a manner  
17 that constitutes an offense of trafficking of persons under Section  
18 20A.02(a)(7) or (8), Penal Code, solicitation of prostitution under  
19 Section 43.021, Penal Code, or compelling prostitution under  
20 Section 43.05(a)(2), Penal Code;

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

26 (ix) [~~(I)~~] the current use by a person of a  
27 controlled substance as defined by Chapter 481, Health and Safety

1 Code, in a manner or to the extent that the use results in physical,  
2 mental, or emotional injury to a child;

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

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

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

15 (xiii) [~~(M)~~] forcing or coercing a child to  
16 enter into a marriage;

17 (xiv) administering or supplying, or  
18 consenting to or assisting in the administration or supply of, a  
19 puberty suppression prescription drug or cross-sex hormone to a  
20 child, other than an intersex child, for the purpose of gender  
21 transitioning or gender reassignment; or

22 (xv) performing or consenting to the  
23 performance of surgery or another medical procedure on a child,  
24 other than an intersex child, for the purpose of gender  
25 transitioning or gender reassignment; and

26 (B) does not include an act described by  
27 Subparagraph (xiv) if the act is the dispensing or delivery of a

1 drug in accordance with Subtitle J, Title 3, Occupations Code, by a  
2 person licensed under that subtitle.

3 (3-a) "Intersex child" means a child who is younger  
4 than 18 years of age and either:

5 (A) has inborn chromosomal, gonadal, genital, or  
6 endocrine characteristics, or a combination of those  
7 characteristics, that are not suited to the typical definition of  
8 male or female or are atypical for the determined sex of the child;  
9 or

10 (B) is considered by a medical professional to  
11 have inborn chromosomal, gonadal, genital, or endocrine  
12 characteristics that are ambiguous or atypical for the determined  
13 sex of the child.

14 SECTION 2. The changes in law made by this Act to Section  
15 261.001, Family Code, do not apply to a person alleged to have  
16 committed abuse with respect to a child who:

17 (1) was born on or before August 31, 2010; and

18 (2) before the effective date of this Act, under the  
19 care of a licensed physician began taking puberty suppressant  
20 prescription drugs or cross-sex hormones or had any surgery or  
21 medical procedure performed for the purpose of gender transitioning  
22 or gender reassignment.

23 SECTION 3. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect on the 91st day after the last day of the

1 legislative session.