88R23885 MLH-F

By:  Campos H.B. No. 4905

Substitute the following for H.B. No. 4905:

By:  Ramos C.S.H.B. No. 4905

A BILL TO BE ENTITLED

AN ACT

relating to the definition of child neglect and to the appointment of the Department of Family and Protective Services and a child's parent or legal guardian as joint managing conservators of the child.

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

SECTION 1.  Section 261.001(4), Family Code, as amended by Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and amended to read as follows:

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

(A)  includes:

(i)  the leaving of a child in a situation where the child would be exposed to an immediate danger 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 an immediate danger of 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 an immediate danger 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 an immediate danger 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 (K) committed against another child;

(iii)  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; or

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

(B)  does not include:

(i)  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, including joint managing conservatorship under Section 262.352, if:

(a)  the child has a severe emotional disturbance;

(b)  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

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

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

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

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

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

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

SECTION 2.  Section 262.352, Family Code, is amended to read as follows:

Sec. 262.352.  JOINT MANAGING CONSERVATORSHIP OF CHILD. (a) In this section, "hotel" has the meaning assigned by Section 792.001, Health and Safety Code.

(b)  Before the department files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, the department must, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with the department.

(c)  A court shall enter an order appointing the department and the child's parent or legal guardian as joint managing conservators of the child if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1)  the child's parent or legal guardian has exhausted all reasonable means available to the parent or legal guardian to obtain mental health services to meet the child's needs;

(2)  the child's parent or legal guardian has agreed to actively participate in the child's service plan in preparation for the child's return to the parent or legal guardian;

(3)  the department is able to provide services necessary to meet the child's mental health needs;

(4)  the department has identified an available licensed placement or a relative or other designated caregiver for the child to meet the child's mental health needs; and

(5)  joint managing conservatorship of the child is in the child's best interest.

(d)  A child in the joint managing conservatorship of the department and the child's parent or legal guardian may not receive temporary emergency care under Section 264.107(g) in a hotel or other unlicensed setting.

(e)  To offset the cost of the child's placement and medical care, the court shall order the parent to pay child support and medical support to the department in an amount equal to the cost of care, unless the court finds that the parent is indigent.

(f)  If the department is unable to identify an available licensed placement to meet the mental health needs of a child in the joint managing conservatorship of the department, the court shall:

(1)  order the child to be placed with the child's parent or legal guardian until the department identifies an available licensed placement for the child; or

(2)  remove the department as a joint managing conservator of the child and dismiss the suit affecting the parent-child relationship.

SECTION 3.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4.  This Act takes effect September 1, 2023.