88R4696 MLH-F

By:  Zaffirini S.B. No. 1611

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

(1)  "Abuse" includes:

(A)  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 to a substantial risk of harm;

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.  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)(A)(v), (vi), (vii), (viii), or (xi) [~~(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 school, 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 school, 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 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 4.  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 5.  This Act takes effect September 1, 2023.