

By: Hull

H.B. No. 2716

A BILL TO BE ENTITLED

1 AN ACT
2 relating to neglect of a child and the grounds for termination of
3 the parent-child relationship and possession of a child by the
4 Department of Family and Protective Services.

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

6 SECTION 1. Section 161.001(c), Family Code, as amended by
7 Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th
8 Legislature, Regular Session, 2021, is reenacted and amended to
9 read as follows:

10 (c) Evidence of one or more of the following does not
11 constitute clear and convincing evidence sufficient for a court to
12 make a finding under Subsection (b) and order termination of the
13 parent-child relationship:

14 (1) the parent homeschooled the child;
15 (2) the parent is economically disadvantaged;
16 (3) the parent has been charged with a nonviolent
17 misdemeanor offense other than:

18 (A) an offense under Title 5, Penal Code;
19 (B) an offense under Title 6, Penal Code; or
20 (C) an offense that involves family violence, as
21 defined by Section 71.004 of this code;

22 (4) the parent provided or administered low-THC
23 cannabis to a child for whom the low-THC cannabis was prescribed
24 under Chapter 169, Occupations Code;

1 (5) the parent declined immunization for the child for
2 reasons of conscience, including a religious belief; ~~[or]~~

3 (6) the parent sought an opinion from more than one
4 medical provider relating to the child's medical care, transferred
5 the child's medical care to a new medical provider, or transferred
6 the child to another health care facility;

7 (7) ~~[(6)]~~ the parent allowed the child to engage in
8 independent activities that are appropriate and typical for the
9 child's level of maturity, physical condition, developmental
10 abilities, or culture; or

11 (8) the parent refused to administer or consent to the
12 administration of a psychotropic medication to the child, or to
13 consent to any other psychiatric or psychological treatment of the
14 child, unless the refusal:

15 (A) presents a substantial risk of death,
16 disfigurement, or bodily injury to the child; or

17 (B) results in an observable and material
18 impairment to the growth, development, or functioning of the child.

19 SECTION 2. Section 261.001(4), Family Code, as amended by
20 Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th
21 Legislature, Regular Session, 2021, is reenacted and amended to
22 read as follows:

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

1 safety and:

2 (A) includes:

3 (i) the leaving of a child in a situation
4 where the child would be exposed to an immediate danger of physical
5 or mental harm, without arranging for necessary care for the child,
6 and the demonstration of an intent not to return by a parent,
7 guardian, or managing or possessory conservator of the child;

8 (ii) the following acts or omissions by a
9 person:

10 (a) placing a child in or failing to
11 remove a child from a situation that a reasonable person would
12 realize requires judgment or actions beyond the child's level of
13 maturity, physical condition, or mental abilities and that results
14 in bodily injury or an immediate danger of harm to the child;

15 (b) failing to seek, obtain, or follow
16 through with medical care for a child, with the failure resulting in
17 or presenting an immediate danger of death, disfigurement, or
18 bodily injury or with the failure resulting in an observable and
19 material impairment to the growth, development, or functioning of
20 the child;

21 (c) the failure to provide a child
22 with food, clothing, or shelter necessary to sustain the life or
23 health of the child, excluding failure caused primarily by
24 financial inability unless relief services had been offered and
25 refused;

26 (d) placing a child in or failing to
27 remove the child from a situation in which the child would be

1 exposed to an immediate danger of sexual conduct harmful to the
2 child; or

3 (e) placing a child in or failing to
4 remove the child from a situation in which the child would be
5 exposed to acts or omissions that constitute abuse under
6 Subdivision (1)(E), (F), (G), (H), or (K) committed against another
7 child;

8 (iii) the failure by the person responsible
9 for a child's care, custody, or welfare to permit the child to
10 return to the child's home without arranging for the necessary care
11 for the child after the child has been absent from the home for any
12 reason, including having been in residential placement or having
13 run away; or

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

21 (B) does not include:

22 (i) the refusal by a person responsible for
23 a child's care, custody, or welfare to permit the child to remain in
24 or return to the child's home resulting in the placement of the
25 child in the conservatorship of the department if:

26 (a) the child has a severe emotional
27 disturbance;

1 (b) the person's refusal is based
2 solely on the person's inability to obtain mental health services
3 necessary to protect the safety and well-being of the child; and

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

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

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

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

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

17 (c) transfer the child to another
18 health care facility; or

19 (iv) the refusal by a person responsible
20 for a child's care, custody, or welfare to administer or consent to
21 the administration of a psychotropic medication to the child, or to
22 consent to any other psychiatric or psychological treatment of the
23 child, unless the refusal:

24 (a) presents a substantial risk of
25 death, disfigurement, or bodily injury to the child; or

26 (b) results in an observable and
27 material impairment to the growth, development, or functioning of

1 the child.

2 SECTION 3. Section 262.116(a), Family Code, as amended by
3 Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th
4 Legislature, Regular Session, 2021, is reenacted and amended to
5 read as follows:

6 (a) The Department of Family and Protective Services may not
7 take possession of a child under this subchapter based on evidence
8 that the parent:

9 (1) homeschooled the child;

10 (2) is economically disadvantaged;

11 (3) has been charged with a nonviolent misdemeanor
12 offense other than:

13 (A) an offense under Title 5, Penal Code;

14 (B) an offense under Title 6, Penal Code; or

15 (C) an offense that involves family violence, as
16 defined by Section 71.004 of this code;

17 (4) provided or administered low-THC cannabis to a
18 child for whom the low-THC cannabis was prescribed under Chapter
19 169, Occupations Code;

20 (5) declined immunization for the child for reasons of
21 conscience, including a religious belief; [~~or~~]

22 (6) sought an opinion from more than one medical
23 provider relating to the child's medical care, transferred the
24 child's medical care to a new medical provider, or transferred the
25 child to another health care facility;

26 (7) [~~(6)~~] allowed the child to engage in independent
27 activities that are appropriate and typical for the child's level

1 of maturity, physical condition, developmental abilities, or
2 culture; ~~[or]~~

3 (8) [~~(7)~~] tested positive for marihuana, unless the
4 department has evidence that the parent's use of marihuana has
5 caused significant impairment to the child's physical or mental
6 health or emotional development; or

7 (9) refused to administer or consent to the
8 administration of a psychotropic medication to the child, or to
9 consent to any other psychiatric or psychological treatment of the
10 child, unless the refusal:

11 (A) presents a substantial risk of death,
12 disfigurement, or bodily injury to the child; or

13 (B) results in an observable and material
14 impairment to the growth, development, or functioning of the child.

15 SECTION 4. The changes in law made by this Act apply only to
16 a suit filed by the Department of Family and Protective Services on
17 or after the effective date of this Act. A suit filed by the
18 department before that date is governed by the law in effect on the
19 date the suit was filed, and the former law is continued in effect
20 for that purpose.

21 SECTION 5. To the extent of any conflict, this Act prevails
22 over another Act of the 88th Legislature, Regular Session, 2023,
23 relating to nonsubstantive additions to and corrections in enacted
24 codes.

25 SECTION 6. This Act takes effect September 1, 2023.