

By: Campos

H.B. No. 4866

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the procedures and grounds for terminating the
3 parent-child relationship.

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

5 SECTION 1. Section 154.001(a-1), Family Code, is amended to
6 read as follows:

7 (a-1) The court may order each person who is financially
8 able and whose parental rights have been terminated with respect to
9 a child in substitute care for whom the department has been
10 appointed managing conservator, a child for a reason described by
11 Section 161.001(b)(1)(P)(iv) or (b)(1)(Q) [~~161.001(b)(1)(T)(iv) or~~
12 ~~(b)(1)(U)~~], or a child who was conceived as a direct result of
13 conduct that constitutes an offense under Section 21.02, 22.011,
14 22.021, or 25.02, Penal Code, to support the child in the manner
15 specified by the order:

- 16 (1) until the earliest of:
- 17 (A) the child's adoption;
 - 18 (B) the child's 18th birthday or graduation from
19 high school, whichever occurs later;
 - 20 (C) removal of the child's disabilities of
21 minority by court order, marriage, or other operation of law; or
 - 22 (D) the child's death; or
- 23 (2) if the child is disabled as defined in this
24 chapter, for an indefinite period.

1 SECTION 2. Section 161.001, Family Code, as amended by
2 Chapters 8 (H.B. 567) and 29 (H.B. 2536), Acts of the 87th
3 Legislature, Regular Session, 2021, is reenacted and amended to
4 read as follows:

5 Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD
6 RELATIONSHIP. (a) In this section, "born addicted to alcohol or a
7 controlled substance" means a child:

8 (1) who is born to a mother who during the pregnancy
9 used a controlled substance, as defined by Chapter 481, Health and
10 Safety Code, other than a controlled substance legally obtained by
11 prescription, or alcohol; and

12 (2) who, after birth as a result of the mother's use of
13 the controlled substance or alcohol:

14 (A) ~~[experiences observable withdrawal from the~~
15 ~~alcohol or controlled substance;~~

16 ~~[(B)]~~ exhibits observable or harmful effects in
17 the child's physical appearance or functioning due to withdrawal
18 from the alcohol or controlled substance; and ~~[or]~~

19 (B) ~~[(C)]~~ exhibits the demonstrable presence of
20 alcohol or a controlled substance in the child's bodily fluids.

21 (b) The court may order termination of the parent-child
22 relationship if the court finds beyond a reasonable doubt ~~[by clear~~
23 ~~and convincing evidence]~~:

24 (1) that the parent has:

25 (A) voluntarily left the child alone or in the
26 possession of another not the parent and expressed an intent not to
27 return;

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

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

8 (D) knowingly placed or knowingly allowed the
9 child to remain in conditions or surroundings that placed [~~which~~
10 ~~endanger the physical or emotional well-being of~~] the child in
11 immediate danger of bodily injury, emotional injury, or physical
12 impairment, including encouraging, prompting, forcing, or allowing
13 a child to engage in human trafficking, sexual intercourse,
14 prostitution, or other behavior that a reasonable person would find
15 to be sexual activity, including activities for the production of
16 photographic, video, or other media that an ordinary, reasonable
17 person could construe as erotica or pornography, but not including
18 providing customary or reasonable age-appropriate education to the
19 child regarding human reproduction and ordinary safe dating
20 relationships;

21 (E) engaged in conduct or knowingly placed the
22 child with persons who engaged in conduct that placed [~~which~~
23 ~~endangers the physical or emotional well-being of~~] the child in
24 immediate danger of bodily injury, emotional injury, or physical
25 impairment including encouraging, prompting, forcing, or allowing
26 a child to engage in human trafficking, sexual intercourse,
27 prostitution, or other behavior that a reasonable person would find

1 to be sexual activity, including activities for the production of
2 photographic, video, or other media that an ordinary, reasonable
3 person could construe as erotica or pornography, but not including
4 providing customary or reasonable age-appropriate education to the
5 child regarding human reproduction and ordinary safe dating
6 relationships;

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

10 (G) abandoned the child without identifying the
11 child or furnishing means of identification, and the child's
12 identity cannot be ascertained by the exercise of reasonable
13 diligence;

14 (H) voluntarily, and with knowledge of the
15 pregnancy, abandoned the mother of the child beginning at a time
16 during her pregnancy with the child and continuing through the
17 birth, failed to provide adequate support or medical care for the
18 mother during the period of abandonment before the birth of the
19 child, and remained apart from the child or failed to support the
20 child since the birth;

21 (I) contumaciously refused to submit to a
22 reasonable and lawful order of a court under Subchapter D, Chapter
23 261;

24 (J) ~~been the major cause of:~~
25 ~~[(i) the failure of the child to be enrolled~~
26 ~~in school as required by the Education Code; or~~

27 ~~[(ii) the child's absence from the child's~~

1 ~~home without the consent of the parents or guardian for a~~
2 ~~substantial length of time or without the intent to return;~~

3 [~~(K)~~] executed before or after the suit is filed
4 an unrevoked or irrevocable affidavit of relinquishment of parental
5 rights as provided by this chapter;

6 (K) [~~(L)~~] been convicted or has been placed on
7 community supervision, including deferred adjudication community
8 supervision, for being criminally responsible for the death or
9 serious injury of a child under the following sections of the Penal
10 Code, or under a law of another jurisdiction that contains elements
11 that are substantially similar to the elements of an offense under
12 one of the following Penal Code sections, or adjudicated under
13 Title 3 for conduct that caused the death or serious injury of a
14 child and that would constitute a violation of one of the following
15 Penal Code sections:

- 16 (i) Section 19.02 (murder);
17 (ii) Section 19.03 (capital murder);
18 (iii) Section 19.04 (manslaughter);
19 (iv) Section 21.11 (indecent with a
20 child);
21 (v) Section 22.01 (assault);
22 (vi) Section 22.011 (sexual assault);
23 (vii) Section 22.02 (aggravated assault);
24 (viii) Section 22.021 (aggravated sexual
25 assault);
26 (ix) Section 22.04 (injury to a child,
27 elderly individual, or disabled individual);

- 1 (x) Section 22.041 (abandoning or
2 endangering child);
- 3 (xi) Section 25.02 (prohibited sexual
4 conduct);
- 5 (xii) Section 43.25 (sexual performance by
6 a child);
- 7 (xiii) Section 43.26 (possession or
8 promotion of child pornography);
- 9 (xiv) Section 21.02 (continuous sexual
10 abuse of young child or disabled individual);
- 11 (xv) Section 20A.02(a)(7) or (8)
12 (trafficking of persons); and
- 13 (xvi) Section 43.05(a)(2) (compelling
14 prostitution);
- 15 (L) [~~(M)~~ had his or her parent-child
16 relationship terminated with respect to another child based on a
17 finding that the parent's conduct was in violation of Paragraph (D)
18 or (E) or substantially equivalent provisions of the law of another
19 state,
- 20 ~~[(N)]~~ constructively abandoned the child who has
21 been in the permanent or temporary managing conservatorship of the
22 Department of Family and Protective Services for not less than 12
23 ~~[six]~~ months, and:
- 24 (i) the department has made reasonable
25 efforts to return the child to the parent;
- 26 (ii) if able, the parent has not regularly
27 visited or maintained significant contact with the child; and

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

3 (M) [~~(O)~~] ~~failed to comply with the provisions of~~
4 ~~a court order that specifically established the actions necessary~~
5 ~~for the parent to obtain the return of the child who has been in the~~
6 ~~permanent or temporary managing conservatorship of the Department~~
7 ~~of Family and Protective Services for not less than nine months as a~~
8 ~~result of the child's removal from the parent under Chapter 262 for~~
9 ~~the abuse or neglect of the child;~~

10 [~~(P)~~] used alcohol or a controlled substance, as
11 defined by Chapter 481, Health and Safety Code, in a manner that
12 endangered the health or safety of the child, including giving
13 birth to a child born addicted to alcohol or a controlled substance,
14 and:

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

17 (ii) after completion of a court-ordered
18 substance abuse treatment program, continued to abuse a controlled
19 substance;

20 (N) [~~(Q)~~] knowingly engaged in criminal conduct
21 that has resulted in the parent's:

22 (i) conviction of an offense; and

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

26 (O) [~~(R)~~] ~~been the cause of the child being born~~
27 ~~addicted to alcohol or a controlled substance, other than a~~

1 ~~controlled substance legally obtained by prescription,~~

2 [~~S~~] voluntarily delivered the child to a
3 designated emergency infant care provider under Section 262.302
4 without expressing an intent to return for the child;

5 (P) [~~T~~] been convicted of:

6 (i) the murder of the other parent of the
7 child under Section 19.02 or 19.03, Penal Code, or under a law of
8 another state, federal law, the law of a foreign country, or the
9 Uniform Code of Military Justice that contains elements that are
10 substantially similar to the elements of an offense under Section
11 19.02 or 19.03, Penal Code;

12 (ii) criminal attempt under Section 15.01,
13 Penal Code, or under a law of another state, federal law, the law of
14 a foreign country, or the Uniform Code of Military Justice that
15 contains elements that are substantially similar to the elements of
16 an offense under Section 15.01, Penal Code, to commit the offense
17 described by Subparagraph (i);

18 (iii) criminal solicitation under Section
19 15.03, Penal Code, or under a law of another state, federal law, the
20 law of a foreign country, or the Uniform Code of Military Justice
21 that contains elements that are substantially similar to the
22 elements of an offense under Section 15.03, Penal Code, of the
23 offense described by Subparagraph (i); or

24 (iv) the sexual assault of the other parent
25 of the child under Section 22.011 or 22.021, Penal Code, or under a
26 law of another state, federal law, or the Uniform Code of Military
27 Justice that contains elements that are substantially similar to

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

3 (Q) [~~(U)~~] been placed on community supervision,
4 including deferred adjudication community supervision, or another
5 functionally equivalent form of community supervision or
6 probation, for being criminally responsible for the sexual assault
7 of the other parent of the child under Section 22.011 or 22.021,
8 Penal Code, or under a law of another state, federal law, or the
9 Uniform Code of Military Justice that contains elements that are
10 substantially similar to the elements of an offense under Section
11 22.011 or 22.021, Penal Code; and

12 (2) that termination is in the best interest of the
13 child.

14 (c) Evidence of one or more of the following does not
15 constitute [~~clear and convincing~~] evidence beyond a reasonable
16 doubt sufficient for a court to make a finding under Subsection (b)
17 and order termination of the parent-child relationship:

18 (1) the parent homeschooled the child;
19 (2) the parent is economically disadvantaged;
20 (3) the parent has been charged with a nonviolent
21 misdemeanor offense other than:

22 (A) an offense under Title 5, Penal Code;
23 (B) an offense under Title 6, Penal Code; or
24 (C) an offense that involves family violence, as
25 defined by Section 71.004 of this code;

26 (4) the parent provided or administered low-THC
27 cannabis to a child for whom the low-THC cannabis was prescribed

1 under Chapter 169, Occupations Code;

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

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

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

12 (8) the parent tested positive for marihuana, unless
13 the department has evidence that the parent's use of marihuana has
14 caused an immediate danger to the child's physical or mental health
15 or emotional development.

16 ~~[(d) A court may not order termination under Subsection~~
17 ~~(b)(1)(O) based on the failure by the parent to comply with a~~
18 ~~specific provision of a court order if a parent proves by a~~
19 ~~preponderance of evidence that:~~

20 ~~[(1) the parent was unable to comply with specific~~
21 ~~provisions of the court order; and~~

22 ~~[(2) the parent made a good faith effort to comply with~~
23 ~~the order and the failure to comply with the order is not~~
24 ~~attributable to any fault of the parent.~~

25 ~~[(d-1) The court may not order termination under Subsection~~
26 ~~(b)(1)(M) unless the petition for the termination of the~~
27 ~~parent-child relationship is filed not later than the first~~

1 ~~anniversary of the date the department or an equivalent agency in~~
2 ~~another state was granted managing conservatorship of a child in~~
3 ~~the case that resulted in the termination of the parent-child~~
4 ~~relationship with respect to that child based on a finding that the~~
5 ~~parent's conduct violated Subsection (b)(1)(D) or (E) or~~
6 ~~substantially equivalent provisions of the law of another state.]~~

7 (e) This section does not prohibit the Department of Family
8 and Protective Services from offering evidence described by
9 Subsection (c) as part of an action to terminate the parent-child
10 relationship under this subchapter.

11 (f) In a suit for termination of the parent-child
12 relationship filed by the Department of Family and Protective
13 Services, the court may not order termination of the parent-child
14 relationship under Subsections (b)(1)(A)-(N) unless the court
15 makes written findings that:

16 (1) the department made reasonable efforts to return
17 the child to the parent before commencement of a trial on the merits
18 and despite those reasonable efforts, a continuing danger remains
19 in the home that prevents the return of the child to the parent; or

20 (2) reasonable efforts to return the child to the
21 parent, including the requirement for the department to provide a
22 family service plan to the parent, have been waived under Section
23 262.2015.

24 (g) In a suit for termination of the parent-child
25 relationship filed by the Department of Family and Protective
26 Services in which the department made reasonable efforts to return
27 the child to the child's home but a continuing danger in the home

1 prevented the child's return, the court shall include in its order
2 written findings detailing the reasonable efforts the department
3 made to return the child to the child's home.

4 (h) A court may order termination of a parent-child
5 relationship under this section only if a jury unanimously agrees
6 that the parent-child relationship should be terminated.

7 SECTION 3. The changes in law made by this Act apply to a
8 suit affecting the parent-child relationship that is filed on or
9 after the effective date of this Act. A suit filed before the
10 effective date of this Act is governed by the law in effect on the
11 date that the suit is filed, and the former law is continued in
12 effect for that purpose.

13 SECTION 4. To the extent of any conflict, this Act prevails
14 over another Act of the 88th Legislature, Regular Session, 2023,
15 relating to nonsubstantive additions to and corrections in enacted
16 codes.

17 SECTION 5. This Act takes effect September 1, 2023.