

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

1
2 relating to the definition of child neglect and to the appointment
3 of the Department of Family and Protective Services and a child's
4 parent or legal guardian as joint managing conservators of the
5 child.

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

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

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

17 (A) includes:

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

23 (ii) the following acts or omissions by a
24 person:

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

6 (b) failing to seek, obtain, or follow
7 through with medical care for a child, with the failure resulting in
8 or presenting an immediate danger of death, disfigurement, or
9 bodily injury or with the failure resulting in an observable and
10 material impairment to the growth, development, or functioning of
11 the child;

12 (c) the failure to provide a child
13 with food, clothing, or shelter necessary to sustain the life or
14 health of the child, excluding failure caused primarily by
15 financial inability unless relief services had been offered and
16 refused;

17 (d) placing a child in or failing to
18 remove the child from a situation in which the child would be
19 exposed to an immediate danger of sexual conduct harmful to the
20 child; or

21 (e) placing a child in or failing to
22 remove the child from a situation in which the child would be
23 exposed to acts or omissions that constitute abuse under
24 Subdivision (1)(E), (F), (G), (H), or (K) committed against another
25 child;

26 (iii) the failure by the person responsible
27 for a child's care, custody, or welfare to permit the child to

1 return to the child's home without arranging for the necessary care
2 for the child after the child has been absent from the home for any
3 reason, including having been in residential placement or having
4 run away; or

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

12 (B) does not include:

13 (i) the refusal by a person responsible for
14 a child's care, custody, or welfare to permit the child to remain in
15 or return to the child's home resulting in the placement of the
16 child in the conservatorship of the department, including joint
17 managing conservatorship under Section 262.352, if:

18 (a) the child has a severe emotional
19 disturbance;

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

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

26 (ii) allowing the child to engage in
27 independent activities that are appropriate and typical for the

1 child's level of maturity, physical condition, developmental
2 abilities, or culture; or

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

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

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

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

11 SECTION 2. Section [262.352](#), Family Code, is amended to read
12 as follows:

13 Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD. (a)
14 In this section, "hotel" has the meaning assigned by Section
15 [792.001](#), Health and Safety Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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