

# Addendum



**TEXASCASA**  
Court Appointed Special Advocates  
FOR CHILDREN

Addendum



# **Addendum 1**

## **Updated Texas Family Code: Definition of Abuse**

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship

Subtitle E. Protection of the Child

Chapter 261. Investigation of Report of Child Abuse or Neglect

Subchapter A. General Provisions

- (1) "Abuse" includes the following acts or omissions by a person:
  - (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;
  - (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;
  - (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;
  - (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;
  - (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 children 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;

***Texas Family Code: Definition of Abuse***

- (F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- (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, prostitution under Section 43.02(b) 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;
- (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;
- (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;
- (J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
- (K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or
- (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.
- (M) forcing or coercing a child to enter into a marriage.

(2) "Department" means the Department of Family and Protective Services.

(3) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

*Several changes were made to the definition of neglect during the 87th Session of the Texas Legislature in 2021. Because some changes to the definition of neglect went into effect earlier than others, there are currently two sections of the Texas Family Code defining neglect and both should be considered fully in effect.*

Text of subdivision as amended by Acts 2021, 87th Leg., R.S., Ch. 29 (H.B. 2536), Sec. 2

(4) Neglect”:

(A) includes:

- (i) the leaving of a child in a situation where the child would be exposed to a substantial risk 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 a substantial risk of immediate 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 a substantial risk 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 a substantial risk of sexual conduct harmful to the child; or

*Texas Family Code: Definition of Abuse*

- (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 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) 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;
  - (a) transfer the child's medical care to a new medical provider; or
  - (a) transfer the child to another health care facility.

Text of subdivision as amended by Acts 2021, 87th Leg., R.S., Ch. 8 (H.B. 567), Sec. 5

(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 a substantial risk 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 a substantial risk of immediate 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 a substantial risk 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 a substantial risk 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
- (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 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.
- (5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:
  - (A) a parent, guardian, managing or possessory conservator, or foster parent of the child;
  - (B) a member of the child's family or household as defined by Chapter 71;
  - (C) a person with whom the child's parent cohabits;
  - (D) school personnel or a volunteer at the child's school; or
  - (E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.
  - (F) an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.
- (6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.
- (7) Repealed by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 36(1), eff. September 1, 2017.
- (8) Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.203(4).
- (9) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

## **Addendum 2**

### **Updated Texas Family Code: Mandatory Reporting**

#### **Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship**

##### **Subtitle E. Protection of The Child**

##### **Chapter 261. Investigation of Report of Child Abuse or Neglect**

##### **Subchapter B. Report of Abuse or Neglect; Immunities**

##### **Sec. 261.101. Persons Required to Report; Time to Report.**

- (a) A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.
- (b) If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has reasonable cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.
- (b-1) In addition to the duty to make a report under Subsection (a) or (b), a person or professional shall make a report in the manner required by Subsection (a) or (b), as applicable, if the person or professional has reasonable cause to believe that

an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of:

- (1) another child; or
  - (2) an elderly person or person with a disability as defined by Section 48.002, Human Resources Code.
- (c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services.
- (d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:
- (1) as provided by Section 261.201; or
  - (2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

