

Appendix C

Texas Child Welfare Statutes

Texas Family Code Section 261.001. DEFINITIONS.

(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;
- (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 conduct that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 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

(4) “Neglect” includes:

- (A) 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;
- (B) the following acts or omissions by a person:
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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
 - (v) 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; or

- (C) 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.

Texas Family Code Section 263.307. FACTORS IN DETERMINING BEST INTEREST OF CHILD.

- (a) In considering the factors established by this section, the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.
- (b) The following factors should be considered by the court, the department, and other authorized agencies in determining whether the child's parents are willing and able to provide the child with a safe environment:
 - (1) the child's age and physical and mental vulnerabilities;
 - (2) the frequency and nature of out-of-home placements;
 - (3) the magnitude, frequency, and circumstances of the harm to the child;
 - (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department or other agency;
 - (5) whether the child is fearful of living in or returning to the child's home;
 - (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;
 - (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;
 - (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;
 - (9) whether the perpetrator of the harm to the child is identified;
 - (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;
 - (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;

- (12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:
 - (A) minimally adequate health and nutritional care;
 - (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;
 - (C) guidance and supervision consistent with the child's safety;
 - (D) a safe physical home environment;
 - (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and
 - (F) an understanding of the child's needs and capabilities; and
 - (13) whether an adequate social support system consisting of an extended family and friends is available to the child.
- (c) In the case of a child 16 years of age or older, the following guidelines should be considered by the court in determining whether to adopt the permanency plan submitted by the department:
- (1) whether the permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living; and
 - (2) whether this transition is in the best interest of the child.

Texas Family Code Section 263.008. FOSTER CHILDREN'S BILL OF RIGHTS.

- (a) In this section:
- (1) "Agency foster group home," "agency foster home," "facility," "foster group home," and "foster home" have the meanings assigned by Section 42.002, Human Resources Code.
 - (2) "Foster care" means the placement of a child who is in the conservatorship of the department or an authorized agency and in care outside the child's home in an agency foster group home, agency foster home, foster group home, foster home, or another facility licensed or certified under Chapter 42, Human Resources Code, in which care is provided for 24 hours a day.
 - (3) "Foster children's bill of rights" means the rights described by Subsection (b).

- (b) It is the policy of this state that each child in foster care be informed of the child's rights provided by state or federal law or policy that relate to:
- (1) abuse, neglect, exploitation, discrimination, and harassment;
 - (2) food, clothing, shelter, and education;
 - (3) medical, dental, vision, and mental health services, including the right of the child to consent to treatment;
 - (4) emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;
 - (5) placement with the child's siblings and contact with members of the child's family;
 - (6) privacy and searches, including the use of storage space, mail, and the telephone;
 - (7) participation in school-related extracurricular or community activities;
 - (8) interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;
 - (9) contact and communication with caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;
 - (10) religious services and activities;
 - (11) confidentiality of the child's records;
 - (12) job skills, personal finances, and preparation for adulthood;
 - (13) participation in a court hearing that involves the child;
 - (14) participation in the development of service and treatment plans;
 - (15) if the child has a disability, the advocacy and protection of the rights of a person with that disability; and
 - (16) any other matter affecting the child's ability to receive care and treatment in the least restrictive environment that is most like a family setting, consistent with the best interests and needs of the child.

- (c) The department shall provide a written copy of the foster children’s bill of rights to each child placed in foster care in the child’s primary language, if possible, and shall inform the child of the rights described by the foster children’s bill of rights:
 - (1) orally in the child’s primary language, if possible, and in simple, nontechnical terms; or
 - (2) for a child who has a disability, including an impairment of vision or hearing, through any means that can reasonably be expected to result in successful communication with the child.
- (d) A child placed in foster care may, at the child’s option, sign a document acknowledging the child’s understanding of the foster children’s bill of rights after the department provides a written copy of the foster children’s bill of rights to the child and informs the child of the rights described by the foster children’s bill of rights in accordance with Subsection (c). If a child signs a document acknowledging the child’s understanding of the foster children’s bill of rights, the document must be placed in the child’s case file.
- (e) An agency foster group home, agency foster home, foster group home, foster home, or other facility in which a child is placed in foster care shall provide a copy of the foster children’s bill of rights to a child on the child’s request. The foster children’s bill of rights must be printed in English and in a second language.
- (f) The department shall promote the participation of foster children and former foster children in educating other foster children about the foster children’s bill of rights.
- (g) The department shall develop and implement a policy for receiving and handling reports that the rights of a child in foster care are not being observed. The department shall inform a child in foster care and, if appropriate, the child’s parent, managing conservator, or guardian of the method for filing a report with the department under this subsection.
- (h) This section does not create a cause of action.