

By: Miller of Comal

H.B. No. 1243

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the criminal offense of ingesting a controlled substance while pregnant or introducing a controlled substance into the body of a person who is pregnant and the consequences of the commission of that offense in a suit affecting the parent-child relationship.

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

SECTION 1. Chapter 22, Penal Code, is amended by adding Section 22.042 to read as follows:

Sec. 22.042. INGESTING CONTROLLED SUBSTANCE WHILE PREGNANT OR INTRODUCING CONTROLLED SUBSTANCE INTO BODY OF PERSON WHO IS PREGNANT. (a) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) ingests a controlled substance while pregnant; or
(2) introduces a controlled substance into the body of a person who is pregnant.

(b) An offense under this section is a state jail felony.

(c) It is a defense to prosecution under this section that the actor ingested a controlled substance while pregnant or introduced a controlled substance into the body of a person who is pregnant at the direction of or pursuant to a prescription issued by a licensed physician.

(d) It is a defense to prosecution under this section that, at the time the actor engaged in the conduct constituting the

1 offense, the actor reasonably believed the actor or person into
2 whose body the actor introduced the controlled substance, as
3 applicable, was not pregnant.

4 (e) Section 22.12 does not apply to conduct constituting an
5 offense under this section.

6 (f) In this section, "prescription" has the meaning
7 assigned by Section 481.002, Health and Safety Code.

8 SECTION 2. Section 161.001, Family Code, is amended to read
9 as follows:

10 Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD
11 RELATIONSHIP. The court may order termination of the parent-child
12 relationship if the court finds by clear and convincing evidence:

13 (1) that the parent has:

14 (A) voluntarily left the child alone or in the
15 possession of another not the parent and expressed an intent not to
16 return;

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

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

24 (D) knowingly placed or knowingly allowed the
25 child to remain in conditions or surroundings which endanger the
26 physical or emotional well-being of the child;

27 (E) engaged in conduct or knowingly placed the

1 child with persons who engaged in conduct which endangers the
2 physical or emotional well-being of the child;

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

6 (G) abandoned the child without identifying the
7 child or furnishing means of identification, and the child's
8 identity cannot be ascertained by the exercise of reasonable
9 diligence;

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

17 (I) contumaciously refused to submit to a
18 reasonable and lawful order of a court under Subchapter D, Chapter
19 261;

20 (J) been the major cause of:

21 (i) the failure of the child to be enrolled
22 in school as required by the Education Code; or

23 (ii) the child's absence from the child's
24 home without the consent of the parents or guardian for a
25 substantial length of time or without the intent to return;

26 (K) executed before or after the suit is filed an
27 unrevoked or irrevocable affidavit of relinquishment of parental

rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);
(ii) Section 19.03 (capital murder);
(iii) Section 19.04 (manslaughter);
(iv) Section 21.11 (indecent with a child);

(v) Section 22.01 (assault);
(vi) Section 22.011 (sexual assault);
(vii) Section 22.02 (aggravated assault);
(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering child);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or

1 promotion of child pornography); ~~and~~

2 (xiv) Section 21.02 (continuous sexual
3 abuse of young child or children); and

4 (xv) Section 22.042(a)(1) (ingesting a
5 controlled substance while pregnant);

6 (M) had his or her parent-child relationship
7 terminated with respect to another child based on a finding that the
8 parent's conduct was in violation of Paragraph (D) or (E) or
9 substantially equivalent provisions of the law of another state;

10 (N) constructively abandoned the child who has
11 been in the permanent or temporary managing conservatorship of the
12 Department of Family and Protective Services or an authorized
13 agency for not less than six months, and:

14 (i) the department or authorized agency has
15 made reasonable efforts to return the child to the parent;

16 (ii) the parent has not regularly visited
17 or maintained significant contact with the child; and

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

20 (O) failed to comply with the provisions of a
21 court order that specifically established the actions necessary for
22 the parent to obtain the return of the child who has been in the
23 permanent or temporary managing conservatorship of the Department
24 of Family and Protective Services for not less than nine months as a
25 result of the child's removal from the parent under Chapter 262 for
26 the abuse or neglect of the child;

27 (P) used a controlled substance, as defined by

Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

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

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

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

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

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription, as defined by Section 261.001;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child; or

(T) been convicted of:

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

1 (ii) criminal attempt under Section 15.01,
2 Penal Code, or under a law of another state, federal law, the law of
3 a foreign country, or the Uniform Code of Military Justice that
4 contains elements that are substantially similar to the elements of
5 an offense under Section 15.01, Penal Code, to commit the offense
6 described by Subparagraph (i); or

7 (iii) criminal solicitation under Section
8 15.03, Penal Code, or under a law of another state, federal law, the
9 law of a foreign country, or the Uniform Code of Military Justice
10 that contains elements that are substantially similar to the
11 elements of an offense under Section 15.03, Penal Code, of the
12 offense described by Subparagraph (i); and

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

15 SECTION 3. Section 262.2015(b), Family Code, is amended to
16 read as follows:

17 (b) The court may find under Subsection (a) that a parent
18 has subjected the child to aggravated circumstances if:

19 (1) the parent abandoned the child without
20 identification or a means for identifying the child;

21 (2) the child is a victim of serious bodily injury or
22 sexual abuse inflicted by the parent or by another person with the
23 parent's consent;

24 (3) the parent has engaged in conduct against the
25 child that would constitute an offense under the following
26 provisions of the Penal Code:

27 (A) Section 19.02 (murder);

- 1 (B) Section 19.03 (capital murder);
2 (C) Section 19.04 (manslaughter);
3 (D) Section 21.11 (indecent with a child);
4 (E) Section 22.011 (sexual assault);
5 (F) Section 22.02 (aggravated assault);
6 (G) Section 22.021 (aggravated sexual assault);
7 (H) Section 22.04 (injury to a child, elderly
8 individual, or disabled individual);
9 (I) Section 22.041 (abandoning or endangering
10 child);
11 (J) Section 25.02 (prohibited sexual conduct);
12 (K) Section 43.25 (sexual performance by a
13 child);
14 (L) Section 43.26 (possession or promotion of
15 child pornography); ~~or~~
16 (M) Section 21.02 (continuous sexual abuse of
17 young child or children); or
18 (N) Section 22.042(a)(1) (ingesting a controlled
19 substance while pregnant);
20 (4) the parent voluntarily left the child alone or in
21 the possession of another person not the parent of the child for at
22 least six months without expressing an intent to return and without
23 providing adequate support for the child;
24 (5) the parent's parental rights with regard to
25 another child have been involuntarily terminated based on a finding
26 that the parent's conduct violated Section 161.001(1)(D) or (E) or
27 a substantially equivalent provision of another state's law;

1 (6) the parent has been convicted for:

2 (A) the murder of another child of the parent and
3 the offense would have been an offense under 18 U.S.C. Section
4 1111(a) if the offense had occurred in the special maritime or
5 territorial jurisdiction of the United States;

6 (B) the voluntary manslaughter of another child
7 of the parent and the offense would have been an offense under 18
8 U.S.C. Section 1112(a) if the offense had occurred in the special
9 maritime or territorial jurisdiction of the United States;

10 (C) aiding or abetting, attempting, conspiring,
11 or soliciting an offense under Subdivision (A) or (B); or

12 (D) the felony assault of the child or another
13 child of the parent that resulted in serious bodily injury to the
14 child or another child of the parent; or

15 (7) the parent's parental rights with regard to two
16 other children have been involuntarily terminated.

17 SECTION 4. The change in law made by this Act to Section
18 262.2015, Family Code, applies only to a suit affecting the
19 parent-child relationship that is filed on or after the effective
20 date of this Act. A suit filed before the effective date of this Act
21 is governed by the law in effect on the date the suit was filed, and
22 the former law is continued in effect for that purpose.

23 SECTION 5. This Act takes effect September 1, 2011.