

APPENDIX B

 KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by *In re A.V.*, Tex.App.-Waco, July 11, 2001

Vernon's Texas Statutes and Codes Annotated

Family Code (Refs & Annos)

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)

Subtitle B. Suits Affecting the Parent-Child Relationship

Chapter 161. Termination of the Parent-Child Relationship (Refs & Annos)

Subchapter A. Grounds

V.T.C.A., Family Code § 161.001

§ 161.001. Involuntary Termination of Parent-Child Relationship

Effective: September 1, 2017

[Currentness](#)

(a) In this section, “born addicted to alcohol or a controlled substance” means a child:

- (1) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and
- (2) who, after birth as a result of the mother’s use of the controlled substance or alcohol:
 - (A) experiences observable withdrawal from the alcohol or controlled substance;
 - (B) exhibits observable or harmful effects in the child’s physical appearance or functioning; or
 - (C) exhibits the demonstrable presence of alcohol or a controlled substance in the child’s bodily fluids.

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

- (1) that the parent has:
 - (A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;
 - (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
 - (C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

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

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

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

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

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

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;¹

(J) been the major cause of:

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

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

(K) executed before or after the suit is filed an 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 under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, 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 promotion of child pornography);
- (xiv) [Section 21.02](#) (continuous sexual abuse of young child or children);
- (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
- (xvi) Section 43.05(a)(2) (compelling prostitution);

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

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

- (i) the department has made reasonable efforts to return the child to the parent;
- (ii) the parent has not regularly visited or maintained significant contact with the child; and
- (iii) the parent has demonstrated an inability to provide the child with a safe environment;

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

(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;

(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;

(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](#);

(ii) criminal attempt under [Section 15.01, 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 15.01, Penal Code](#), to commit the offense described by Subparagraph (i);

(iii) criminal solicitation under [Section 15.03, 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 15.03, Penal Code](#), of the offense described by Subparagraph (i); or

(iv) the sexual assault of the other parent of the child under [Section 22.011](#) or [22.021, Penal Code](#), or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Section 22.011](#) or [22.021, Penal Code](#); or

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

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

(c) A court may not make a finding under Subsection (b) and order termination of the parent-child relationship based on evidence that the parent:

(1) homeschooled the child;

(2) is economically disadvantaged;

(3) has been charged with a nonviolent misdemeanor offense other than:

(A) an offense under Title 5, Penal Code;

(B) an offense under Title 6, Penal Code; or

- (C) an offense that involves family violence, as defined by [Section 71.004](#) of this code;
 - (4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or
 - (5) declined immunization for the child for reasons of conscience, including a religious belief.
- (d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:
- (1) the parent was unable to comply with specific provisions of the court order; and
 - (2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.
- (e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

Credits

Added by [Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995](#). Amended by [Acts 1995, 74th Leg., ch. 709, § 1, eff. Sept. 1, 1995](#); [Acts 1995, 74th Leg., ch. 751, § 65, eff. Sept. 1, 1995](#); [Acts 1997, 75th Leg., ch. 575, § 9, eff. Sept. 1, 1997](#); [Acts 1997, 75th Leg., ch. 1022, § 60, eff. Sept. 1, 1997](#); [Acts 1999, 76th Leg., ch. 1087, § 1, eff. Sept. 1, 1999](#); [Acts 1999, 76th Leg., ch. 1390, § 18, eff. Sept. 1, 1999](#); [Acts 2001, 77th Leg., ch. 809, § 1, eff. Sept. 1, 2001](#); [Acts 2005, 79th Leg., ch. 508, § 2, eff. Sept. 1, 2005](#); [Acts 2007, 80th Leg., ch. 593, § 3.30, eff. Sept. 1, 2007](#); [Acts 2009, 81st Leg., ch. 86, § 1, eff. Sept. 1, 2009](#); [Acts 2011, 82nd Leg., ch. 1 \(S.B. 24\), § 4.02, eff. Sept. 1, 2011](#); [Acts 2015, 84th Leg., ch. 1 \(S.B. 219\), § 1.078, eff. April 2, 2015](#); [Acts 2015, 84th Leg., ch. 944 \(S.B. 206\), § 11, eff. Sept. 1, 2015](#); [Acts 2017, 85th Leg., ch. 40 \(S.B. 77\), § 2, eff. Sept. 1, 2017](#); [Acts 2017, 85th Leg., ch. 317 \(H.B. 7\), § 12, eff. Sept. 1, 2017](#).

[Notes of Decisions \(2367\)](#)

Footnotes