The Best Interest of the Child

The Evidence, the Law, and the Case for Rebuilding the Texas Family Code

Submitted to the Texas Commission on Marriage and Family, the Senate Committee on State Affairs, the Sunset Advisory Commission, and the Members of the 90th Legislature

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Executive Summary

Two hundred eighty-two thousand family cases, and one question

In fiscal year 2025 Texas district courts disposed of 282,099 family cases. A jury decided 109 of them. In 85,539 the petitioner had no lawyer. Behind those numbers sits a parent's right to raise a child, a right the people of Texas wrote into their Bill of Rights in 2025 and called fundamental (Tex. Const. art. I, § 37). The Family Code decides that right by a preponderance of the evidence. It makes "the best interest of the child" the primary consideration of the court and uses the phrase 193 times without once defining it. The order that decides where a child lives while a case is pending is not subject to interlocutory appeal. The federal money behind child support pays for orders and collections, and none of the measures it pays on asks whether a child still has a relationship with both parents. In the 2024 federal Child and Family Services Review, Texas was in substantial conformity with none of the seven outcomes measured for the children in its own care, a result that is not unique to Texas: no state passed all seven outcomes in that round, and Texas matched its own 2016 result.

This report asks one question: is this the system Texas promised its children? It measures the system against three standards Texas has already written, H.B. 3284, article I, section 37 of the Texas Constitution, and the Senate's own interim charges, and it finds that the system does not meet them. It then says what to do, bill by bill. Every finding carries its source and its strength, so that a reader who doubts a number can turn to the chapter that proves it.

Numbers and Limits. The figures that carry the argument are quoted here with their limits, so that no reader meets a limit first from the other side.

The court counts. The 282,099 dispositions, 109 jury verdicts, and 85,539 self-represented petitioners are court-reported counts (Grade C). They show that custody is set by agreement or by one judge in virtually every case. They do not show how judges decide, because Texas does not publish custody outcomes.

The Swedish estimate. The 0.47 standard deviation effect of joint custody comes from a working paper that is not yet peer reviewed (Grade A in design, pending peer review). It applies to marginal contested cases and chiefly measures joint legal custody, so it supports shared decision-making and bears only indirectly on equal time. The case for equal time rests on the meta-analyses, which show an association of modest size (about one tenth of a standard

deviation in the most recent synthesis of joint physical custody, d = 0.109) with selection controlled in only some studies, and on the Code's own text.

The federal review. Texas was in substantial conformity with none of the seven outcomes in the 2024 Child and Family Services Review, as in 2016, but no State has passed the federal review in any round (Abbott et al., 2025). On one measure Texas does better than the nation: maltreatment recurred within twelve months for 6.6 percent of children, against 9.7 percent nationally.

False allegations. The literature cannot establish a rate of false allegations in custody litigation in either direction, and the report relies on no single rate.

The Constitution, repeal, and the measures. Article I, Section 37 invites the Legislature to protect a fundamental right; the Supreme Court of Texas has not yet decided what standard of proof it carries, and the standards proposed here are policy. The evidence on repeal of no-fault divorce is partial, and the report predicts nothing about the divorce rate; it asks the Legislature to require a measured review after four years. The attachment measures are validated as measures of attachment, not as a basis for dividing time. The author's commercial interest in those measures is disclosed in the Statement of Interest and handled by a bar that applies to him.

The rest of this summary gives the standard, the thesis, ten findings, and the recommendations. Chapters 2 through 11 hold the proof.

The standard Texas has already chosen

In 2025 the Legislature found that “it is in the best interests of this state to promote lasting marriage and the practice of raising children in stable, two-parent households,” and that “Texas must promote evidence-based pathways to support strong and healthy family connections by reducing barriers that prevent Texans from marrying and raising children” (H.B. 3284, 89th Leg., R.S., § 2(1), (2)). The bill passed the House 107 to 32 and the Senate 25 to 6. It created the Texas Commission on Marriage and Family and directed it to “evaluate existing state laws, rules, and policies and identify those that discourage Texans from marrying and raising children,” and to recommend “necessary changes to state laws, rules, and policies that are identified as being detrimental to the promotion of lasting marriages, family formation, and child rearing” (§ 7(1), (3)(A)). The same year the people of Texas added to their Bill of Rights that “a parent has the responsibility to nurture and protect the parent’s child and the corresponding fundamental right to exercise care, custody, and control of the parent’s child” (Tex. Const. art. I, § 37). In September 2026 the Senate Committee on State Affairs heard two interim charges: to study “inefficient or inconsistent divorce and child custody proceedings” that produce “unpredictable timelines, unnecessary delays, repetitive child evaluations, or other needless complications,” and to recommend procedures that “truly prioritize the best interests of children”; and to study “attempts by public advocacy groups to improperly influence the judiciary with biased informational seminars.”

This report takes the State at its word. It measures the Texas family law system against the

standard the Legislature wrote, the right the Constitution now names, and the charges the Senate set, and it finds that the system does not meet them.

The thesis

The family law system, as structured by the Family Code, operated by the family courts and the Department of Family and Protective Services, and financed in part through Title IV-D and Title IV-E of the Social Security Act, does not meet the standard of H.B. 3284. It permits fit parents to be separated from their children through procedures that do not match the fundamental right the Texas Constitution expressly recognizes; it operates under financing rules whose measures count case activity rather than preserved relationships; and it relies on assessment practices that the forensic and developmental literature does not support. Because the quality and continuity of caregiving predict children's later outcomes, and because randomized evidence shows that improving caregiving improves attachment security and child outcomes, the State should rebuild the system around preserving each child's relationship with each fit parent, and should attach real consequences to knowing or intentional conduct that destroys that relationship.

The report reads every source at its proper strength. Randomized trials, natural experiments, and meta-analyses of them carry causal language; longitudinal and sibling designs carry the language of prediction; associations are called associations. Every finding about groups of children is stated as a finding about groups, and no finding is offered as a prediction about a particular child.

What the report finds

1. Children need continuity of care from each parent, and the State can change caregiving. Randomized trials establish that caregiving quality changes children's development. Children randomly assigned from Romanian institutions to foster families had internalizing disorders at half the rate of children left in institutional care (22.0 against 44.2 percent; Zeanah et al., 2009). A randomized caregiver intervention cut disorganized attachment among children at high risk of neglect from 57 to 32 percent (Bernard et al., 2012). Attachment security is moderately stable and responsive to what caregivers do (Fraley, 2002). Children form attachments to more than one caregiver, and the strongest designs on father absence find real harm from losing a resident parent, smaller than advocates on either side claim (McLanahan, Tach & Schneider, 2013). Joint custody is associated with better adjustment across 33 studies (Bauserman, 2002), and the first study to allocate custody by the random assignment of judges, a Swedish working paper released in July 2026 and not yet peer reviewed (Grade A in design, pending peer review), estimated that joint custody raised children's scores on their first national test by 0.47 standard deviations, in marginal contested cases and chiefly through joint legal custody (Canessa et al., 2026). The principle that survives the whole record is continuity: the law should preserve each fit parent's caregiving relationship with the child (Chapter 2).

2. The Family Code does not hold together on its own terms. It makes the best interest of the

child “the primary consideration of the court” (Tex. Fam. Code § 153.002) and uses the phrase “best interest” 193 times in 134 sections without once defining it. It declares a public policy of “frequent and continuing contact” with both parents (§ 153.001(a)(1)) and then presumes as best a schedule its own text calls “reasonable minimum possession” (§ 153.252). It gives the parties a jury and then bars the jury from deciding how much time the child spends with each parent. It requires reasons for a departure from the standard schedule only if a party asks. It allocates a right the Constitution calls fundamental by a preponderance of the evidence. And it permits either spouse to end a marriage without stating a reason, in a State whose Legislature has found lasting marriage to be in the State’s interest (Chapter 3).

3. The Code as operated decides first and reviews last. The order that sets where a child lives while a case is pending is not subject to interlocutory appeal (§ 105.001(e)); the only route is mandamus, which the Supreme Court of Texas has granted where it found the divestiture of a fit parent “irremediable” (In re Derzapf, 219 S.W.3d 327, 335 (Tex. 2007)). Contested conservatorship may be decided by an associate judge, and a parent who wants the elected judge has three working days to ask. Findings issue only on request; a reporter is required before an associate judge only for a jury trial or a contested termination hearing. In fiscal year 2025 Texas district courts disposed of 282,099 family cases; 109 were decided by a jury, and in 85,539 the petitioner had no lawyer (Chapter 4).

4. The money counts orders and collections, not children. The federal government reimburses 66 percent of Texas child support administration without a ceiling and pays incentives on five measures: paternity, orders, current collections, arrears collections, and cost-effectiveness (45 C.F.R. § 305.2). None measures a child’s relationship with either parent. The only federal money aimed at a child’s access to a parent is a $10 million national grant. The Family Code directs the regional presiding judges and the Title IV-D agency to “maximize the amount of federal funds available” (§ 201.107(c)). Texas collects current support at the national median (64.1 percent against 64.0) and reported $20.5 billion in arrears in fiscal year 2024. The report claims no misconduct. It shows that the federal measures count orders, collections, and placements and do not count whether a child kept a relationship with a fit parent. Whether the counting changes what any judge or caseworker does is unmeasured, and the report does not claim that it does; it asks that it be measured (Chapters 5 and 7).

5. The methods that decide contested cases are not validated for that purpose, and the best instruments are validated only as measures of attachment. A Texas custody evaluator must hold a license and supervised experience; no subsection of § 107.104 requires training in research design, measurement, or inference, and surveyed evaluators drew their custody training overwhelmingly from seminars (Bow & Quinnell, 2001). Abuse allegations are decided in civil court by a preponderance of the evidence, and no method validated for family courts is routinely required to test them. The literature cannot establish a rate of false allegations in custody litigation in either direction, and the report relies on no single rate (Trocmé & Bala, 2005, report only what caseworkers judged in their own investigations). An ex parte protective order can restrict a parent’s access before the parent is heard, and the temporary order is the one with the weakest record of protecting anyone (Holt et al., 2002). The evidence on partner

violence supports a paired proposition: aggressive acts are common in both directions, while injury and fear fall more often on women. The law should be written for both halves of that finding (Chapter 6).

6. Child support debt accumulates detached from parentage and ability to pay. Each unpaid installment becomes a judgment by operation of law that cannot be reduced for the past (42 U.S.C. § 666(a)(9)), interest accrues, and enforcement reaches licenses, credit, and confinement. Federal law makes a signed acknowledgment of paternity a basis for a support order without genetic testing; the report proposes testing before an acknowledgment is signed; a rule that support is collected only by a household below 200 percent of the federal poverty guideline and is not owed by a parent whose income would fall below 250 percent of it; and an end to garnishment, to confinement for arrears, and to arrears already accrued. Some of these fit the federal conditions and some do not. Terminating arrears conflicts with 42 U.S.C. § 666(a)(9) and with Tex. Const. art. I, § 16 unless the requirement is waived, and the other items marked in Chapter 7 need a federal waiver or an act of Congress (Chapter 7).

7. The State as custodian does not meet the standards it accepted. In the 2024 federal Child and Family Services Review, Texas was in substantial conformity with none of the seven outcomes measured, the same result as in 2016. No State has passed the federal review in any round (Abbott et al., 2025), so the result is not unique to Texas, and the Department's twelve-month recurrence rate of 6.6 percent is better than the national 9.7 percent. The Department reported about $2.55 billion in funding for fiscal year 2024, 35 percent of it federal, down from 52 percent twelve years earlier, a decline that does not fit the claim that federal money drives the State's removals. The causal research on foster care cuts both ways at the margin, which is why the proposals concern who decides, on what proof, and with what record (Chapter 8).

8. Those who work within the rules participate in writing and teaching them. The public record shows family law practitioners, through their own association, participating openly in writing family law, and shows judicial education on mandated subjects such as attachment taught with no evidence standard. The report asserts no motive and applies one standard to every trainer, the author included (Chapter 9).

9. Consequences for knowing harm are narrow and often foreclosed. Federal immunities cannot be changed by Texas, but Texas can create its own remedies, define its own offenses, and condition appointments. Official oppression requires both intent and knowledge that the conduct is unlawful and is a misdemeanor, and the statute that voids silence clauses about child sexual abuse does not reach physical abuse or neglect (Chapter 10).

10. Nothing can be corrected that cannot be seen. Texas does not publish custody and possession outcomes by court, by parent, or by whether the case was agreed or contested. The Government Code already directs the Office of Court Administration to gather case-level court data (§ 71.035(a)); the data that would show how the best-interest standard is applied is not among what it collects (Chapter 11).

What the report recommends

Chapter 12 sets out a first group of bills, each amending named sections of the existing Code, as the foundation and design principles for a Model Family Code in the 90th Legislature. Appendix C summarizes them, and a companion document gives the drafting specifications.

Recommendation	What it does	Duty or charge it answers
Divorce grounds	Repeals the no-fault grounds (§§ 6.001, 6.006) and keeps cruelty and the other surviving grounds, on which spouses who both want out proceed by agreed judgment; creates no ground that requires no reason; adds an express ground for family violence or child abuse with mandatory criminal referral; predicts nothing about divorce rates and asks for a measured review after four years. Fallback only (if repeal fails): strips the no-fault filer's advantages	H.B. 3284, § 7(3)(B)(ii) and § 7(1)
Equal parenting	Presumes that equal or substantially equal possession by each fit parent is in the child's best interest; allocates the burden of proof and does not displace the best-interest standard; rebuttable only by clear and convincing evidence, stated in written findings of the specific facts relied on; a fit parent is one not found, on those findings, to endanger the child's physical or emotional welfare who is willing and able to exercise possession. For a child under twelve months, a stepped schedule of increasing frequency and duration	Senate charge: fair and consistent procedures that truly prioritize children

Recommendation	What it does	Duty or charge it answers
	moving toward equal time by the child's second year, the same whichever parent has been the primary caregiver. Section 153.004 family-violence findings unchanged and displace the presumption	
Temporary orders	Requires findings for any departure from equal time and an accelerated appeal of orders that change conservatorship or restrict a parent; fallback only (if repeal fails): no temporary conservatorship or possession orders in no-fault suits	Senate charge: unpredictable timelines
Plea failsafe	A plea is not a finding. No plea, deferred adjudication, plea agreement, stipulation, agreed order, or default is evidence of, or a basis for, any finding of abuse, neglect, endangerment, or unfitness, or for any reduction of a parent's possession, access, or conservatorship; a reduction on alleged criminal conduct may rest only on a jury's finding; no term on possession may be bargained for in a plea; the court admonishes the defendant in writing and defense counsel certifies it; an order reduced on the basis of a plea is voidable at any time; emergency safety orders remain available for no more than fourteen days without a hearing with findings. It regulates the civil effect of pleas and does not limit	Senate charge

Recommendation	What it does	Duty or charge it answers
	charging, bargaining, or the prosecutor's exclusive function	
Findings and recording	Written findings of the specific facts relied on in every ruling that designates a conservator, sets or varies possession, restricts a parent’s time or rights, or awards fees against a parent, made without request in every contested case and wherever a party has no counsel (an agreed order with all parties represented needs only the agreement and a best-interest statement), with remand for findings as the remedy; and audio and video recording of every hearing, with no public release of any image of a child	Senate charge; H.B. 3284, § 7(3)(A)
Associate judges	Reserves contested conservatorship and possession to the elected judge unless the parties consent, and lengthens the de novo window	Senate charge: unnecessary delays
Standard Protocol Evaluation	Replaces the open-ended evaluation with a fixed battery of measures validated as measures of attachment (not as a basis for dividing time), scored blind by reliability-certified coders assigned at random, with recording and raw-data review; an input to the court’s findings and never a recommendation on custody; no one who sells services for an approved instrument may serve as appointee, vendor, or pool administrator	Senate charge: repetitive child evaluations

Recommendation	What it does	Duty or charge it answers
Abuse allegations	Keeps emergency safety orders available in family court on a corroborated showing of imminent danger, sends allegations of a felony that endangers a child to criminal court for expedited trial with child-witness protections, requires a final hearing within the fourteen-day limit, lets a reduction of a parent's time on alleged criminal conduct rest only on a jury's finding, mirrors the penalty for a convicted knowing false report, which is protected by the same good-faith immunity that exists now, and adds a time-back rule: when an allegation of abuse or neglect is not found by a jury or on a final hearing, or is dismissed, withdrawn, or otherwise unsubstantiated, the accused parent receives make-up possession equal to twice the time lost to any restriction imposed because of it, taken in blocks of the parent's choosing within twenty-four months and enforced as possession; real, substantiated findings keep every protection	Senate charge
Ex parte orders	Requires the adversary hearing within a short fixed period where a custody suit is pending, with findings and county reporting	Senate charge: unpredictable timelines
Child support	Genetic confirmation before support, ability-to-pay thresholds, no retroactive	H.B. 3284, § 7(1)

Recommendation	What it does	Duty or charge it answers
	support or interest, no confinement for arrears, each set against the federal conditions	
Removal and CPS	Clear and convincing evidence at the full adversary hearing, and an independent, phased audit of the child protective services division followed by a transition plan fixed by statute, through the Sunset bill	H.B. 3284, § 7(2)(B)
Accountability	An offense defined by conduct, not rulings (a knowingly false statement in an official record; concealing or destroying a record or recording; acting outside jurisdiction; retaliating for a report; knowingly obstructing court-ordered possession; coercing or procuring a plea by misstating its family-court consequences), expressly not reaching a good-faith ruling within jurisdiction, and a Texas civil action against appointees for administrative acts; the report proposes no liability for judicial rulings	Senate charge
Nondisclosure agreements	Voids silence clauses covering any child abuse and makes buying silence about child abuse a felony	H.B. 3284, § 7(3)(A)
Judicial education	One public, evidence-graded standard for every family-law program that earns judicial credit, whoever sponsors it	Senate charge: Protecting the Integrity of the Judiciary
Data	Court-level publication of conservatorship and possession outcomes, agreed or contested, by parent	H.B. 3284, § 7(1)

The duty to present is drafted as a statute: on a magistrate's finding of probable cause for a specified offense against a child, the prosecuting attorney presents the matter to a grand jury within sixty days or files written reasons with the district judge, with no command to prosecute and no dismissal penalty. Up to four joint resolutions are proposed, two of them offered as insurance: authorization of a non-local prosecutor (Tex. Const. art. V, § 21), judicial selection and the State Commission on Judicial Conduct (art. V, §§ 1-a, 11, 28), an end to confinement for unpaid support (art. I, § 18), and, as a later option, an implementing amendment to art. I, § 37.

For the Commission

The Commission's report is due November 1, 2026, and its statute asks for findings and legislative recommendations. The findings above answer § 7(1): they identify the laws, rules, and policies that discourage Texans from marrying and raising children together, beginning with unilateral no-fault divorce, a possession schedule presumed best while described as a minimum, and a financing structure that pays for orders rather than relationships. The recommendations answer § 7(3)(A) and (B), and the strongest statutory hook in the Commission's charge, to "reduce the incidence of divorce and family dissolution" (§ 7(3)(B)(ii)), is the reason the report leads with the divorce grounds. The report predicts nothing about the effect of repeal on the divorce rate and asks the Legislature to require a measured review after four years. The Commission can adopt the findings and the principles of the first group of bills without adopting any bill's every detail.

For the Senate Committee on State Affairs

The Protecting Texas Families charge asks for fair and consistent procedures that truly prioritize children. Chapters 3, 4, and 6 identify where the procedures are inconsistent and why; the temporary-order, findings, recording, associate-judge, evaluation, and ex parte bills answer them. The repetitive-evaluation problem is answered by the Standard Protocol, which replaces the open-ended evaluation with a fixed, blind, recorded battery and requires a good-cause finding before any second evaluation. The Protecting the Integrity of the Judiciary charge is answered by the judicial education standard in Chapter 9, which applies one disclosure and evidence rule to every sponsor and every presenter, including those aligned with the author.

How to read this report

Chapter 1 states the question and the method. Chapters 2 through 11 build the argument from the child to the remedy. Chapter 12 lays out the legislative pathway. Chapter 13 states the strongest objections to the report, as their best proponents would state them, and answers each. The Conclusion draws the argument together, and the Limits chapter states what the report does not establish, beginning with the fact that Texas does not publish the custody outcomes that would let anyone measure the system directly. Appendix A lists the sources by chapter, Appendix B gives the full references, and Appendix C summarizes the first group of bills.
Statement of Interest and Disclosures

A report that asks the Legislature to rebuild its family law owes the reader a full account of who wrote it, what the author does for a living, what he has done in public life, and what stake he has in the outcome. The account follows. It is placed first so that nothing in it can later be offered as a discovery, and so that the reader can test every finding in the chapters against its source without needing to trust the author at all.

Training and position. The author holds the Ph.D. in Experimental Psychology, with an emphasis in Developmental Psychology, from Texas Christian University (2010); his dissertation was titled *Development of an Adult Attachment Scale*. He holds the M.A. in Clinical Psychology from Cardinal Stritch University (2004), which included a forensic internship at the Wisconsin Forensic Unit, and the B.S. in Psychology, cum laude, from Southwest Texas State University (2001). He served the Texas Christian University Institute of Child Development as Research Scientist (2011 to 2012) and as Assistant Director of Research (2012 to 2013), was a Dissertation Chair at Grand Canyon University (2017 to 2018), and taught psychology as adjunct faculty in the Dallas County Community College District (2014 to 2016). He has worked as an independent consultant in Red River County, Texas, since 2013. His peer-reviewed work includes Purvis, McKenzie, Kellermann and Cross (2010) in the *Journal of Child Custody* and Howard, Call, McKenzie, Hurst, Cross and Purvis (2013) in *Children and Youth Services Review*. He has been qualified and has testified as an expert witness in Texas courts and in other States.

Certification. Dr. McKenzie completed and passed the full 30-case reliability test for analysis of the Adult Attachment Interview on January 2, 2009, certified by Mary Main and Erik Hesse of the Department of Psychology at the University of California, Berkeley, and was found reliable in both three-category and four-category analysis. He codes under the system of Main, Goldwyn and Hesse (2003) and scores the Attachment Q-Set of Waters (1995) using the criteria of Pederson and Moran (1995).

Professional standing. The author is not a licensed psychologist and does not represent himself as one. He provides no diagnosis and no treatment. His practice is the administration, coding, and interpretation of validated attachment measures, together with training, research, and expert testimony. Nothing in this report is an opinion about any person he has not assessed, and the report assesses no one.

Commercial interest. The author provides Adult Attachment Interview coding, Attachment Q-Set administration, and Trust-Based Relational Intervention training commercially. Several recommendations in this report concern how attachment is assessed in custody cases, and a reader is entitled to ask whether they would enlarge his market. For that reason every such recommendation is written as a vendor-neutral standard: validated attachment measures scored by reliability-certified coders. The report names no product and no provider. It also proposes a statutory bar on any person who sells training, coding, scoring, or administration services for an approved instrument, or who holds a financial interest in one, serving as an appointee, vendor, or pool administrator, and the bar applies to the author. The standard it proposes would be met by any coder who has passed the published reliability tests, whether or not that coder has any connection with the author, and Chapter 6 states the limits of these measures with the same care it gives to their strengths.

Judicial and bar education. The author has presented at the Texas Judicial Summit (2009, 2010, and 2012) and to the Tarrant County Family Law Bar Association (2014 and 2017). Chapter 9 proposes a single evidence and disclosure standard for every program that trains Texas judges on family law. That standard reaches presentations of the kind the author has given, and those given by his allies, exactly as it reaches anyone else's.

Civic and political activity. The author is the Republican Precinct Chair for Precinct 4 in Red River County. He was a candidate for State Chair of the Republican Party of Texas in the race decided at the state convention on June 12, 2026. He served as a delegate to the Republican Party of Texas state conventions of 2022 and 2024, and he wrote the 2024 amendment to Rule 44 of the Rules of the Republican Party of Texas that added censure of members of the judiciary. During the 89th Legislature he worked on S.B. 293 and S.J.R. 27 with Texans for Judicial Accountability. He has offered his expertise by email to members of the Texas Commission on Marriage and Family and to members of the Senate Committee on State Affairs, and he testified before the Commission in August 2026. A reader may fairly regard this record as advocacy for judicial accountability and for family law reform. It is disclosed so that the argument of the report can be weighed on its evidence. Every recommendation in the chapters that follow is stated as the author's own, and each rests on the statutes, decisions, data, and studies cited where it is made.

Personal interest. The author is a party to a family law proceeding in a Texas court. Its facts are not discussed anywhere in this report, they form no part of its evidence, and no recommendation depends on them.

Funding. This report is self-funded.

Faith. The author is a Christian and states the moral premise of his work in the Preface that follows. The Preface is marked as faith-based reasoning and is kept apart from the evidence. The legal and scientific argument of the report begins in Chapter 1 and stands without it.

Preface: A Word on Faith and the Child

This Preface states the author's faith. It is faith-based reasoning, marked as such and set apart from the evidence. The findings and recommendations of the report rest on the Constitutions, statutes, decisions, data, and studies cited in each chapter, and a reader who does not share the author's faith may accept or reject every one of them on those sources alone.

The author writes as a Christian, and he says so plainly so that no reader has to infer it. A report on the law of children, written by a man who believes that children are entrusted to their parents by God, ought to say where that belief enters and where it stops. It enters here, in the reason the author regards a child's bond with each parent as a matter of the first importance. It stops here as well. Nothing in the chapters that follow asks a legislator to accept a proposition because Scripture teaches it.

The Psalmist writes: "Lo, children are an heritage of the LORD: and the fruit of the womb is his reward." Psalm 127:3 (King James Version). An heritage is something received in trust. It belongs

first to the one who gave it, and the one who receives it holds it for a time and answers for how it was kept. On that view, a parent does not own a child, and neither does the State. Both hold the child in trust, and the question every custody statute answers, whether it admits it or not, is which trustee may act, on what proof, and with what accountability when the trust is broken.

The sternest words in the Gospels about the treatment of children are these: “But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea.” Matthew 18:6 (King James Version). The same saying appears at Mark 9:42 and Luke 17:2. The verse before it supplies the other half of the teaching: “And whoso shall receive one such little child in my name receiveth me.” Matthew 18:5 (King James Version). The passage does not rank the offender by office or title. It places the weight on the harm and on the child who bears it. The passage is the author’s frame and not a recommendation of this report.

The author draws four things from these passages. The first is the weight. Scripture treats harm to a child as among the gravest of wrongs, and an institution that acts in a child’s name takes that weight on itself when it acts. The second is the order of duty. The duty to nurture and protect a child falls first on the child’s parents and then on every person and institution that takes the child into its hands: courts, agencies, evaluators, attorneys appointed for the child, and those who report. The third is the standard. An institution that may remove a child from a parent should be held to at least the standard it applies to parents: it should give written reasons, keep a record, prove before it punishes, and answer for knowing harm. The fourth is the limit. The passage names no person and no office. The author applies it to a standard of conduct, not to any individual, and he applies the same standard to himself, to his own profession, and to the trainers and advocates who share his views.

It may be observed that the people of Texas, voting in 2025, chose words for their Constitution that a reader of these passages will recognize. Article I, Section 37 affirms that a parent has “the responsibility to nurture and protect the parent’s child and the corresponding fundamental right to exercise care, custody, and control of the parent’s child.” Responsibility comes first in that sentence, and the right corresponds to it. The author does not claim that the voters intended a theological statement, and the report does not argue from one. He notes only that the civil text and the older text agree on the order of things: the parent’s duty is the ground of the parent’s right, and a State that interrupts the one without proof interrupts the other.

That is the whole of the faith argument. From this point forward, the report proceeds on evidence. # Chapter 1. The Question

In 2025 the Texas Legislature did something legislatures rarely do. It wrote down, in a statute, what it believes about families, and then it built a body whose only task was to find the laws that work against that belief. In 2026 the Senate Committee on State Affairs took up two interim charges that asked, in different words, whether the courts that decide custody serve the children whose custody they decide. In the same months the Sunset Advisory Commission began its review of the Department of Family and Protective Services, the agency through which the State itself takes custody of children. Three bodies, three mandates, and one question

beneath them: does the Texas system that decides where a child lives, and with whom, serve that child by the State's own measure?

This chapter states the question as the State has posed it, states the answer this report defends, and sets out how that answer was tested, including what the report cannot know and how it proceeds without it. The chapters that follow carry the argument; this one fixes the terms on which it should be judged.

1.1 What the State Asked

The Texas Commission on Marriage and Family exists because of H.B. 3284, 89th Leg., R.S. (2025). The bill passed the House 107 to 32, with two members present and not voting, on May 14, 2025, and the Senate 25 to 6 on May 26, 2025. It took effect immediately on June 20, 2025, and it expires, with the Commission, on December 31, 2026. Its second section contains the findings on which everything in this report is measured:

> "The legislature finds that: (1) it is in the best interests of this state to promote lasting marriage and the practice of raising children in stable, two-parent households; (2) Texas must promote evidence-based pathways to support strong and healthy family connections by reducing barriers that prevent Texans from marrying and raising children; (3) certain state laws, rules, and policies may discourage the positive and desirable ends of marriage and family formation; and (4) it is necessary to convene a commission to: (A) study and develop strategies to promote strong marriages and healthy families; and (B) identify state laws, rules, and policies that discourage Texans from marrying and raising children." H.B. 3284, § 2.

These are findings of an uncodified session law that expires at the end of this year; they state policy, and no court will apply them to a family. Their force is of a different kind. They are the Legislature's own statement of the standard by which its laws should be judged, adopted by large majorities in both chambers, and they contain two commitments a reviewer can test. The first is substantive: stable households in which children are raised by two parents serve the State's interest. The second is methodological: the pathways to that end must be "evidence-based." A body of law that separates children from fit parents on thin evidence fails the first commitment, and a body of law that cannot say what evidence it relies on fails the second. This report holds the Family Code to both.

The Commission "is created to study and develop strategies for promoting strong marriages and healthy families and to make recommendations to the legislature to advance the goal of creating an environment in this state that is favorable for marriage and raising children." H.B. 3284, § 3. Its duties are set out in Section 7:

> "The commission shall: (1) evaluate existing state laws, rules, and policies and identify those that discourage Texans from marrying and raising children; (2) assess the effectiveness of: (A) state-funded premarital education programs and other initiatives promoting marriage; and (B) state-funded programs in encouraging family formation and

> helping parents develop and apply successful parenting skills and techniques; and (3) make recommendations to the legislature regarding: (A) necessary changes to state laws, rules, and policies that are identified as being detrimental to the promotion of lasting marriages, family formation, and child rearing; and (B) policies, programs, and strategies to: (i) support and increase the formation of strong, lasting marriages and healthy family connections; and (ii) reduce the incidence of divorce and family dissolution." H.B. 3284, § 7.

Two features of this text govern the design of the report. The first is the phrase "child rearing" in Section 7(3)(A). A law can be detrimental to child rearing in two ways: it can discourage a family from forming, or it can dissolve a relationship that already exists. The first is a question about private choices and the incentives that shape them. The second is a question about what the State itself does through its courts and its agency, and it is the harm over which the State has the most direct control. This report concentrates on it. The second feature is Section 7(3)(B)(ii), which directs recommendations to "reduce the incidence of divorce and family dissolution." It is the statutory foundation for the report's recommendations on divorce, and the only provision in the three mandates that names family dissolution as an outcome the State should reduce. The report does not claim that repeal will reduce the incidence of divorce. It predicts nothing about rates and asks for a measured review.

Section 9 requires the Commission to deliver, by November 1, 2026, "a written report that includes a summary of the commission's findings and any legislative recommendations." This report has the same structure: each chapter states what the evidence establishes, at the grade it supports, and what the Legislature should do about it. The Commission's membership categories include a board-certified family law attorney, experts in child development, and published researchers (§ 4(b)), and the report is written for readers who will test the law and the science with equal skepticism.

The Senate Committee on State Affairs received two charges that bear on the same system. The first, "Protecting Texas Families," heard on September 14, 2026, reads in full:

> "Study the unnecessary burden placed on Texas children and families who suffer from inefficient or inconsistent divorce and child custody proceedings. Identify inefficiencies in these proceedings that result in unpredictable timelines, unnecessary delays, repetitive child evaluations, or other needless complications. Make recommendations to ensure Texas families have access to fair and consistent procedures in family courts and truly prioritize the best interests of children."

The second, "Protecting the Integrity of the Judiciary," heard on September 15, 2026, reads in full:

> "Study attempts by public advocacy groups to improperly influence the judiciary with biased informational seminars. Identify entities attempting to influence judges with training based on skewed information. Make recommendations to ensure Texas judges remain fair and impartial and are not influenced or trained by nefarious individuals

attempting to improperly impact the outcome of cases.”

The official witness lists record sixty-five witnesses who testified on the first charge and sixteen on the second, all recorded as testifying on the charge rather than for or against a measure. The organized voices came from every side: a family-law trade association, family-violence organizations, public-policy institutes, parental-equality organizations, and sitting and former judges, alongside evaluators, clinicians, and many parents speaking for themselves. The Committee does not lack testimony. It lacks a common measure against which to weigh testimony that points in opposite directions, and supplying that measure is the first purpose of this report.

The first charge contains a word that does more work than any other in it. The Committee is asked to recommend procedures that “truly prioritize the best interests of children.” The adverb is a finding in miniature: a standard already being met does not need to be truly met. The best-interest standard is the Family Code’s own (Tex. Fam. Code § 153.002(a)), and the charge asks, in effect, whether the Code’s central standard is honored by the courts that apply it. Section 1.4 takes up that question. The second charge names no entity. It speaks of advocacy groups and “skewed information,” and the only defensible answer to it is a standard that applies to every trainer by the same test, including trainers whose views this report shares and including the author, who has presented at judicial education programs himself. The report adopts that standard as a rule of its own method (Section 1.5.5) and applies it in Chapter 9.

These questions reached the Senate’s interim agenda recently: the Committee’s interim report to the 89th Legislature, dated January 10, 2025, carried fifteen charges and none on family law, custody, child support, or child protection.

The third venue is the Sunset review of the Department of Family and Protective Services, which ends in a Sunset bill before the Legislature that convenes on January 12, 2027. As of October 6, 2026, no staff report had been published, and the Commission’s tentative calendar set public testimony for November 18 and 19 and decision for December 15 and 16, 2026. In its own Self-Evaluation Report, the first major issue the Department placed before the Commission was the quality and consistency of its investigations, the due process afforded in them, and the state of its case records. That is the agency’s account, not yet tested by Sunset staff, but it shows that the State’s custodial agency, and not only its critics, has put due process in investigations before the review.

The three mandates converge on one object, the set of legal decisions by which the State determines, or allows a court to determine, that a child will no longer live with, or will see less of, a parent. Some of those decisions are made in suits between parents and some in suits brought by the State; some are provisional and some final. All are made under the Family Code, in courts or agencies the State funds, and all are justified in the Code’s words by the child’s best interest. The question this report answers is whether those decisions meet the standard the State has set for itself.

1.2 The Thesis

The report defends a single thesis. It is stated in full, because every chapter that follows argues for one of its parts.

> Texas has found that it is in the State's best interest to promote lasting marriage and the raising of children in stable, two-parent households, and that the State must promote evidence-based pathways to that end (H.B. 3284, § 2). The family law system, as structured by the Family Code, operated by the family courts and DFPS, and financed in part through Title IV-D and Title IV-E, does not meet that standard. It permits fit parents to be separated from their children through procedures that do not match the fundamental right the Texas Constitution now expressly recognizes; it operates under financing rules whose measures count case activity rather than preserved relationships; and it relies on assessment practices that the forensic and developmental literature does not support. Because the quality and continuity of caregiving predict children's later outcomes, and because randomized evidence shows that improving caregiving improves attachment security and child outcomes, the State should rebuild this system around preserving each child's relationship with each fit parent, and should attach real consequences to knowing or intentional conduct that destroys that relationship.

The thesis makes four claims, each of which can be tested and each of which could be wrong. The first concerns the measure: the State has already chosen the standard by which its family law should be judged, combining the substantive commitment of Section 2(1) with the evidentiary commitment of Section 2(2). The second concerns procedure: the processes by which Texas restricts a parent's relationship with a child do not carry the protections that a right the Constitution calls "fundamental" would ordinarily carry. The third concerns structure: the measures attached to the financing of the system count orders entered, collections made, and placements funded, and do not count the outcome the State says it values, a child who keeps both parents. Whether the counting changes any outcome is unmeasured, and the report asks that it be measured. The fourth concerns knowledge: the assessments on which courts rely in contested cases are not those the developmental and forensic literature supports. Three terms carry particular weight and are used in a fixed sense. A *fit parent* is a parent who has not been found, on written findings of the specific facts relied on, to endanger the child's physical or emotional welfare and who is willing and able to exercise possession. The report proposes that a departure from equal possession by fit parents require clear and convincing evidence, which the Code defines as "the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." Tex. Fam. Code § 101.007. *Preserving the relationship* means preserving the continuity of a child's caregiving with each parent on whom the child relies. It describes relationships, not a formula for dividing calendar days, though Chapter 3 argues that equal possession is the right starting point for each fit parent. *Real consequences* attach to knowing or intentional conduct, not to error made in good faith, and are set by statute so that they apply to every actor alike.

The thesis has limits. It does not claim that every parent is fit, that abuse is rare, or that a child

is never safer away from a parent. It does not claim that anyone acts from improper motive; it claims that the structure in which judges, caseworkers, evaluators, and attorneys work produces results the Code's own text disclaims. Where it proposes more protection than the courts have held the Constitution to require, it says so and offers the proposal as policy. The report supplies the evidentiary foundation and the design principles for a Model Family Code that the 90th Legislature can begin to build. The first bills it recommends amend named sections of the existing Code; a full replacement is the later project, sequenced in Chapter 12. The argument is that the Code cannot stand under its own weight; the recommendation is that it be rebuilt in order, beginning where the harm is greatest and the evidence strongest.

A thesis that cannot fail is not worth testing. This one fails if caregiving continuity does not predict children's outcomes; if randomized trials show that improving caregiving does not change attachment or later functioning; if Texas procedure for restricting a parent's relationship with a child already provides the protections the Constitution's text implies; if the financing rules are neutral as to whether a family stays connected; or if the assessments courts use rest on measures validated for the decision they inform. Each is taken up in a chapter where the strongest contrary evidence is stated beside the evidence for the thesis.

1.3 Three Lenses

A question about a legal system that decides the custody of children can be asked in three vocabularies: the child's development, the parent's rights, and the institution's incentives. Each is incomplete alone. Developmental science says what children need but not what process the State owes; constitutional law says what process is owed but not what a child loses without it; the economics of institutions says what a system counts but not whether anyone is harmed. The report asks the question in all three, because a defect that appears under independent methods is unlikely to be an artifact of any one.

1.3.1 Developmental science: what a child needs from the decision

The first lens asks what the evidence on child development implies for how the State should decide. Its central concept is attachment, used in the sense established in the research literature: the enduring emotional bond by which a child seeks proximity to and security from a caregiver. The evidence here is unusually strong for the social sciences, and its strength lies in its designs.

The foundational finding concerns transmission: a parent's state of mind regarding attachment, measured by the Adult Attachment Interview, predicts the attachment classification of that parent's infant. A meta-analysis of eighteen samples comprising 854 parent and infant pairs found a combined effect size of 1.06 and 75 percent correspondence between the parent's classification and the infant's (van IJzendoorn, 1995). The same paper states the limit: the mechanism of transmission is only partly understood, and later syntheses report smaller associations, a point Section 1.5.5 takes up because it bears on the author's own field. The second finding concerns stability. Attachment security is moderately stable across the first

nineteen years of life (Fraley, 2002). Moderate stability is the defensible claim, not permanence; Rutter (1999), writing on children who suffered severe early deprivation, cautioned that earlier claims of irreversibility were overstated. The effects of early adversity are persistent in many children, not permanent in all.

The third finding concerns consequences. The meta-analysis on externalizing problems (Fearon et al., 2010) reports effects of d = 0.31 for attachment insecurity and d = 0.34 for disorganization, larger than those for avoidance (d = 0.12) or resistance (d = 0.11, not significant), and the predictive significance did not diminish with the age at which symptoms were measured. A companion meta-analysis extended the question to internalizing problems (Groh et al., 2012). These effects are modest for any one child. Across a population they are consistent and they compound, which is why they matter to a legislature writing rules for hundreds of thousands of cases.

The fourth finding converts association into cause. In the Bucharest Early Intervention Project, institutionalized children were assigned at random to foster families or to continued institutional care, and assignment to family care halved the rate of internalizing disorders, from 44.2 percent to 22.0 percent (Zeanah et al., 2009). In a randomized trial of the Attachment and Biobehavioral Catch-up intervention with 120 children of parents at high risk for neglect, 32 percent of the intervention group were classified as disorganized and 52 percent as secure, against 57 percent and 33 percent of controls (Bernard et al., 2012). In a randomized trial with 137 maltreating families, two interventions directed at the caregiving relationship each produced substantial increases in secure attachment at twenty-six months, while the usual child-welfare services did not (Cicchetti, Rogosch & Toth, 2006). These Grade A designs show that improving the quality of caregiving causes improvement in attachment security and child outcomes. Their limit is that the samples were institutionalized or at high risk, not families in custody litigation.

What follows for law is a question this lens puts to every procedure: when a court or agency interrupts a child's relationship with a caregiver, does it act on evidence about that relationship, and does it preserve the continuity of caregiving the child already has with each parent? The leading international statement on attachment in custody and child protection holds that children form multiple attachments, that assessments of caregiver behavior should take center stage, and that using attachment-quality assessments to allocate custody time is ill-advised, and it records that its authors did not all agree on the use of such assessments in custody and child-protection decisions (Forslund et al., 2022). It also acknowledges that validated assessments by trained, certified coders can improve prediction above chance and that many instruments in use have lower or unknown predictive validity, and Main, Hesse and Hesse (2011) endorse validated measures scored by certified coders. The report departs from Forslund and colleagues on one point, whether validated attachment measures should be a required input to a contested custody evaluation, including one that allocates parenting time, and Chapter 6 states that departure as contested. The measures are validated as measures of the attachment relationship and are not validated as a basis for deciding how time is divided, so the protocol the report proposes produces an input to the court's findings, never a recommendation on custody.

The strongest contrary evidence comes from behavior genetics. A twin study found about 40 percent of the variance in adolescent attachment to be heritable (Fearon et al., 2014). A heritability estimate describes sources of variation in one population at one age; it does not show that changing caregiving fails to change outcomes, and the randomized trials show that it succeeds. The lens therefore rests on its strongest evidence, and its claim is precise: caregiving continuity predicts outcomes, and improving caregiving causes improvement.

1.3.2 Due process: what a parent is owed before the State decides

The second lens asks what process the State owes a parent before it restricts the parent's relationship with a child. Texas now answers the first part of that question in its Constitution. On November 4, 2025, Article I, Section 37 was added to the Bill of Rights:

> "To enshrine truths that are deeply rooted in this nation's history and traditions, the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing." Tex. Const. art. I, § 37.

The text pairs a responsibility with a right and calls the right fundamental. It states no standard of review, no standard of proof, and no remedy. In *In re K.N.*, the Supreme Court of Texas ordered supplemental briefing on the amendment and then held only that its decision did not conflict with Section 37, leaving "a more robust discussion of this new provision of our Constitution for another day, following appropriate percolation in the lower courts." In re K.N., No. 24-0881, slip op. at 17 to 18 (Tex. June 5, 2026). The same day, in a termination case, a five-justice majority cited Section 37 beside *Holick v. Smith* and wrote: "For constitutional reasons, therefore, we must strictly scrutinize termination proceedings and construe involuntary termination statutes strictly in the parent's favor." In re H.S., No. 24-0307, slip op. at 18 to 19 (Tex. June 5, 2026) (citing Holick v. Smith, 685 S.W.2d 18, 20 (Tex. 1985)). That language predates the amendment, which the Court cited as confirming it. No court of appeals decision applying Section 37 was found, and its effect on temporary orders, conservatorship, and possession between parents is undecided.

The older guarantee is Article I, Section 19, which forbids deprivation of "life, liberty, property, privileges or immunities" except "by the due course of the law of the land." The federal law of due process supplies the analytic method. In *Mathews v. Eldridge*, the Supreme Court of the United States held that the process due in a given setting is set by weighing three factors: the private interest affected; the risk of an erroneous deprivation through the procedures used, and the probable value of additional safeguards; and the government's interest, including the fiscal and administrative burdens of added procedure. 424 U.S. 319, 335 (1976). The fundamental requirement is the opportunity to be heard "at a meaningful time and in a meaningful manner." Id. at 333.

The federal decisions on parental rights fix a floor that Texas law must meet and may exceed. A plurality of the Court described the parental interest as "perhaps the oldest of the fundamental

liberty interests recognized by this Court," held that "there is a presumption that fit parents act in the best interests of their children," and required a court reviewing a fit parent's decision to "accord at least some special weight to the parent's own determination." Troxel v. Granville, 530 U.S. 57, 65, 68 to 69 (2000) (plurality opinion). *Santosky v. Kramer* applied the *Mathews* factors to termination and held that "before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." 455 U.S. 745, 754 to 755, 768 (1982). It added that "until the State proves parental unfitness, the child and his natural parents share a vital interest in preventing erroneous termination." Id. at 760. *Stanley v. Illinois* required an individualized hearing on an unwed father's fitness before the State took his children, and two of its sentences remain the best short statement of the problem this report addresses: "The Constitution recognizes higher values than speed and efficiency." "Procedure by presumption is always cheaper and easier than individualized determination." 405 U.S. 645, 656 to 657 (1972).

Those holdings have limits, and the report states them before an opponent can. *Troxel* is a plurality decision, decided as applied, whose authors declined to "define today the precise scope of the parental due process right in the visitation context." 530 U.S. at 73. *Santosky* is a termination case; the Court has not extended its standard of proof to custody between parents, and it upheld a preponderance standard for establishing paternity in *Rivera v. Minnich*, 483 U.S. 574 (1987). In Texas, *In re C.J.C.* holds that a court must apply the presumption that a fit parent, and not the court, determines the child's best interest whenever a nonparent seeks conservatorship or access over the fit parent's objection, including in a modification suit. 603 S.W.3d 804 (Tex. 2020), slip op. at 3, 18. Every decision read for this report applies that presumption against nonparents; none applies it between two fit parents, each of whom holds the same right. That open question is the Legislature's to answer, and a statute setting the standard of proof and the findings required before a fit parent's relationship with a child is restricted would conflict with no holding read for this report. Texas already applies clear and convincing evidence to a nonparent who asks to displace a fit parent (Tex. Fam. Code § 153.002(c)), and the report's position is that where a harm is serious enough to interfere with a fit parent's time with a child, whoever asks the State to act on that harm proves it by that standard. Four other States that enacted equal-parenting presumptions chose the weaker preponderance standard; Texas should not copy it.

The *Mathews* method gives the Legislature a disciplined way to ask what process the Family Code should provide, whatever the courts eventually hold. On the first factor, the people of Texas have declared the parent's interest fundamental, and Section 1.3.1 shows the child's interest in the relationship to be substantial as well. On the second factor, the Code's own text supplies the evidence of risk. Temporary orders in a suit affecting the parent-child relationship, which may award conservatorship and exclude a parent from possession, "are not subject to interlocutory appeal." Tex. Fam. Code § 105.001(e); see also id. §§ 6.507, 109.001(c). Section 105.001 requires notice and a hearing before such an order, and a verified pleading or affidavit before an order excluding a parent from access, id. § 105.001(b), (c)(3), but it requires no findings. Review is by mandamus, which issues for a clear abuse of discretion with no adequate

remedy by appeal; the Supreme Court of Texas has granted it when temporary orders gave nonparents possession over a fit parent's objection, calling such a divestiture "irremediable." In re Derzapf, 219 S.W.3d 327, 335 (Tex. 2007) (per curiam). On the third factor, *Santosky*'s observation applies with added force when the State is not a party: in a dispute between two fit parents, the State's only legitimate interest is an accurate decision, and it shares that interest with the child.

Temporary orders do not escape review; mandamus is available and has been granted. But the order that sets where a child will live while the case is pending is entered without required findings and is reviewable only by an extraordinary writ. A right the Constitution calls fundamental is protected, at the moment it is most exposed, by a writ reserved for clear abuse of discretion. Chapters 3 and 4 take up these provisions in full.

1.3.3 Incentives: what the system is paid to do

The third lens asks what conduct the financing of the system rewards. It makes no assumption about motive. Institutions respond to what they are measured on and paid for, and the legislature that writes the measures is responsible for what they count.

Two federal programs finance much of the Texas system. Title IV-D of the Social Security Act finances child support enforcement. The federal government reimburses 66 percent of a State's allowable child support administrative expenditure without a cap on the total, as the Congressional Research Service summarizes the matching rule, and pays incentive payments from a national pool fixed by regulation. 45 C.F.R. § 305.31. The incentives are computed on five measures: paternity establishment, support order establishment, current collections, arrearage collections, and cost-effectiveness. 45 C.F.R. § 305.2. None measures a child's well-being or a child's time with either parent. The only federal funding aimed at a child's access to a parent, the Access and Visitation grant program, totals $10 million a year for every State and territory combined, by the same congressional summary. In fiscal year 2024 Texas distributed $4,285,157,499 in child support collections, and its incentive payments for fiscal year 2022 were $97,071,543. The Family Code provides that the presiding judges of the administrative judicial regions, who appoint the Title IV-D associate judges and may terminate their appointments at any time, "and the Title IV-D agency shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IV-D program." Tex. Fam. Code §§ 201.101(b), 201.107(c). The State's child support program is graded on five numbers, and the child's relationship with the paying parent is not one of them.

Title IV-E finances foster care. Once a child is removed with the required judicial findings, federal reimbursement is open-ended: maintenance at the State's medical assistance percentage, administration at 50 percent, and training at 75 percent. Maintenance payments depend on "a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts" to prevent removal were made. 42 U.S.C. § 672(a)(2)(A). The Family First Prevention Services Act of 2018 added federal funding for prevention, limited to services approved by a federal clearinghouse. Federal money for a child in foster care is an entitlement once the findings are made; federal

money for keeping the child at home is narrower. The Department reported about $2.55 billion in funding for fiscal year 2024, of which $896,904,628, about 35 percent, was federal.

The report draws from these structures only what they support. No source read for this report measures whether the financing of Title IV-D courts influences how conservatorship is decided, and no source shows that the Department's spending is wasteful; the report claims neither, because a funding pattern is not proof of misconduct. What the lens establishes is narrower and harder to dismiss. The measures by which the system is graded count orders, collections, and placements; they do not count preserved relationships; and the Code directs part of the judiciary to maximize the federal money those measures generate. The strongest contrary point is that the money funds real services, that collected support reaches children, and that Texas collects a share of current support due at the national median. That is correct, and Chapter 5 says so. The question is not whether the money does good. It is whether the State's measures count the outcome the State says it wants, and they do not. Whether the counting changes what any judge or caseworker does is unmeasured, and the report asks that it be measured, so that no one has to argue about motive.

1.3.4 Why the three lenses converge

The three lenses rest on different foundations, and the first two point to the same defect. Each identifies as its point of greatest concern the early, provisional decision that sets a child's caregiving arrangement: the temporary order in a divorce or custody suit, the ex parte protective order, and the emergency removal. Developmental science identifies that point because it is where continuity of caregiving is first interrupted, often for months and often for a very young child. Due process identifies it because the risk of error is highest there: the record is thinnest, findings are not required, the standard of proof is lowest, and review is narrowest. The incentive lens identifies it because that is where federal financing attaches to a removal: the findings that make a removal reimbursable must appear "in the first court ruling that sanctions (even temporarily) the removal." 45 C.F.R. § 1356.21(b)(1). Two methods on independent foundations locate the same weakness in the same place, and that convergence is itself evidence; the third shows what the State does not measure at that place.

The convergence is not complete, and the report does not pretend otherwise. The causal evidence on removal into foster care points both ways: in Illinois in the 1990s, children on the margin of placement fared worse when placed; in Michigan in the 2010s, comparable children fared better, with gains that appeared after most were reunified with their parents (Doyle, 2007; Gross & Baron, 2022). Chapter 8 reports both. That evidence does not weaken the procedural point. On the authors' own reading, whether removal helps or harms a marginal child depends on what the State does afterward, and a decision that consequential ought to be made with findings, on a sufficient record, and subject to prompt review.

1.4 What "Best Interest" Has Meant, and What It Has Failed to Mean

"The best interest of the child shall always be the primary consideration of the court in

determining the issues of conservatorship and possession of and access to the child." Tex. Fam. Code § 153.002(a). The sentence is a command, and it is the right command. The question is what it has been given to mean.

The answer begins with a count. In the Family Code text rendered by the Legislature on December 13, 2025, the words "best interest" appear 193 times in 134 sections, and the full phrase "best interest of the child" appears in 99 of those sections. Chapter 101 defines the terms used throughout the title on parents and children, more than fifty of them, including "clear and convincing evidence," "standard possession order," "parent," and "family violence." It does not define "best interest." The Code instructs every court in Texas that the child's best interest is the primary consideration, and then, across a Code of eighty-one chapters, declines to say what it is. The House committee charged in 2024 to examine "the Texas Family Code definition of 'best interest of child'" was asked to examine a definition that does not exist.

What the Code supplies instead are factor lists and presumptions, scattered by context and pointing in different directions. For a court appointing joint managing conservators without an agreed parenting plan, Section 153.134(a) lists seven factors, among them "whether both parents participated in child rearing before the filing of the suit." In a suit brought by the Department, Section 263.307 lists thirteen different factors and opens with a presumption: "the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest." Tex. Fam. Code § 263.307(a). In a suit between a parent and a nonparent, a third rule governs. Since the 2025 amendment of Section 153.002, it is a rebuttable presumption that "a parent acts in the best interest of the parent's child" and that "it is in the best interest of a child to be in the care, custody, and control of a parent," and a nonparent may overcome it only by clear and convincing evidence that denying the requested relief "would significantly impair the child's physical health or emotional development," with the supporting facts stated specifically in the order. Id. § 153.002(b), (c).

Set side by side, these provisions give one phrase three meanings. Against a nonparent, the child's best interest is presumed to lie with the parent, and the presumption yields only to clear and convincing proof recited in specific findings. In a suit brought by the State, the factors are weighed under a presumption favoring prompt and permanent placement. Between two parents, the Code contains no presumption that a parent acts in the child's best interest; the 2025 presumption is confined by its terms to suits between a parent and a nonparent. What the Code offers between parents is a presumption that both be appointed joint managing conservators, which allocates rights and duties and is removed by a finding of a history of family violence, Tex. Fam. Code § 153.131(b), and a presumption that the standard possession order "provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator," id. § 153.252, an order the Code says is designed for children three years of age or older, id. § 153.251(d).

The Code's statements of policy reach further than its presumptions. The public policy of the State is to "assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child" and to "encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved

their marriage." Tex. Fam. Code § 153.001(a)(1), (3). It is "the policy of this state to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child." Id. § 153.251(b). That is a policy of optimization, implemented through a presumption of a minimum. The statute tells the court what it hopes for and what it will settle for, and leaves the court to choose between them without a standard for the choice.

The standard of proof and the duty to explain complete the picture. Unless the title provides otherwise, "the court's findings shall be based on a preponderance of the evidence." Tex. Fam. Code § 105.005. For conservatorship and possession between parents, the provisions read for this report set no higher standard, so a court may reduce a fit parent's time with a child on a finding that a fact is more likely than not. And because the reasons for departing from the standard possession order are stated only on request, id. § 153.258(a), the most consequential decision in most cases, how much time a child will spend with each parent, may be made without any written account of why.

What the best-interest standard has meant in Texas, then, is judicial discretion bounded by factor lists that vary by context and presumptions that apply to some disputes and not others. It has not meant a defined standard, because the Code never says what the child's best interest consists of; nor a measured one, because, as Section 1.5.6 shows, no public record allows anyone to test how it is applied; nor one tied to the evidence on what children need. The Code's policy of frequent and continuing contact with each parent is consistent with the developmental evidence. Its operative provisions do not carry that policy into the cases where it matters most.

The strongest objection is that the absence of a definition is deliberate: a standard that must fit every family cannot be reduced to a formula. The report accepts the premise and rejects the conclusion. It proposes no rule that would prevent a court from finding, on evidence, that a particular arrangement would harm a particular child. But discretion without a stated measure cannot be reviewed, and discretion that need not be explained cannot be corrected. The remedy is not to replace judgment with a formula. It is to give the standard content consistent with the State's own findings and the evidence, to fix the burden of proof for departing from it, and to require the court to say why it departed. Chapters 3 and 4 develop that remedy section by section.

1.5 Method

A report that asks a legislature to rebuild a body of law carries a burden of accuracy that ordinary advocacy does not. The method described here was applied to every sentence, to the sources that support the thesis and to those that oppose it, and the reader can apply it in turn to the report.

1.5.1 The source hierarchy

Sources were ranked before they were used. The first tier is primary: enacted text as published by the enacting body, court opinions, government data, and peer-reviewed research read in the

article itself. The second tier is authoritative secondary material: systematic reviews and meta-analyses, federal agency guidance, and analyses by the Legislature's research offices. The third comprises law reviews, books, and institute reports, used with their funding and method disclosed. News articles, advocacy websites, and social media are not cited for any fact and were used, if at all, only to locate a primary source.

Texas statutes were read in the Legislature's own text: the Family Code as rendered on December 13, 2025, reflecting the amendments of the 89th Legislature, and the Texas Constitution as rendered on July 31, 2026. Appendix A records the source of every finding. A claim for which no source was read was left out.

1.5.2 Evidence grades

Scientific findings were graded by the design that produced them, and the grade governs the language used.

Grade	Design	Language permitted
A	Randomized trials; natural experiments; meta-analyses or systematic reviews of rigorous studies	"causes," "produces," "results in"
B	Prospective longitudinal studies with strong controls; sibling, fixed-effects, or instrumental-variable designs	"predicts," "strong evidence that"
C	Cross-sectional studies with controls; large administrative datasets	"is associated with"
D	Case studies, clinical observation, expert consensus statements	"illustrates," "experts report"

Source: the report's verification protocol, adopted September 15, 2026.

Two further distinctions are kept throughout: findings about groups are distinguished from conclusions about individuals, and correlational findings from designs built to support causal inference. The research on father absence shows why. McLanahan, Tach and Schneider (2013) found that more rigorous designs report smaller negative effects than cross-sectional studies, with the strongest effects on high school graduation, social and emotional adjustment, and adult mental health. The report uses the smaller estimates. A claim is not strengthened by choosing the design that yields the larger number.

1.5.3 The Research Quality Audit

Much of the family-law literature, on every side, cannot support the claims made from it. Each study the report relies on or answers was audited on eight points: how it decided what was true

(and whether an evaluator's judgment served as ground truth), the representativeness of its sample, the validity of its measures, whether its design supports a causal claim, who funded and designed it and with what prior position, whether its finding transfers to contested custody cases, the stage of a case at which it measured an allegation or outcome, and whether it has been independently replicated.

The audit was applied to supporting sources as strictly as to opposing ones. A widely cited consensus report on overnight care for young children (Warshak, 2014) is graded as expert consensus and presented with the published replies that contest it, and a review favorable to shared physical custody (Nielsen, 2018) is identified as a vote count by an author associated with the shared-parenting position. A study finding that early overnights with fathers predicted better relationships with both parents in young adulthood (Fabricius & Suh, 2016) is reported with its authors' statement that the design does not establish causality. On the other side, a federally funded study often cited on abuse allegations in custody cases (Saunders, Faller & Tolman, 2011) measured professionals' beliefs and estimates, not actual rates; its authors concede that the representativeness of their samples is unknown, and the same report notes that a widely repeated statistic attributed to the American Judges Association had no supporting research. Emery (2021) names scholar-advocacy bias as a risk across this literature, and the audit is the report's protection against it.

The audit has a consequence the report states openly. Where the literature cannot establish a rate in either direction, as it cannot for the frequency of false allegations of abuse in custody litigation, the absence of a valid rate is itself a finding. A system that restricts parents on allegations for which it routinely requires no method validated for family courts should test those allegations on a record under a real burden of proof, while emergency safety orders remain available to protect the child at once. Chapter 6 develops that argument.

1.5.4 The disconfirmation rule

Every finding records what would disprove it, and the check was made before the finding was written. The strongest contrary source is stated beside each claim, and contradictions are reported with both sources. On foster care, the report presents the Illinois studies that found harm at the margin of placement and the Michigan and Rhode Island studies that found benefit, with the reasons the authors themselves give for the difference. On shared parenting, the meta-analytic advantage of joint physical over sole custody is small, about one tenth of a standard deviation ($d = 0.109$), and the families who choose shared care differ from those who do not; the report says both (Baude, Pearson & Drapeau, 2016, as reported in Emery, 2021). The same rule governs the treatment of persons. No one is described as acting from improper motive and no institution as corrupt. Where the record shows a structure, an incentive, or a pattern in the State's data, the report states it and draws no conclusion about intent.

1.5.5 One standard for all sides

The judicial-integrity charge speaks of training "based on skewed information" and names no group. The report answers with a rule that names none either: every claim, study, and trainer is

held to the same standard, whichever side it serves. The rule reaches the author, who has presented at judicial education programs and provides attachment coding commercially. His own field is audited by the same test as any other. The meta-analytic association between a parent's Adult Attachment Interview classification and the child's attachment, about r = .47 in 1995, is smaller in the later synthesis by Verhage and colleagues (2016), which reports figures of .31 for the secure-autonomous classification and .21 for the unresolved classification across 95 samples, and the report treats the smaller figures as the current evidence. The observer-sorted Attachment Q-Set is supported as valid by a meta-analysis of 139 studies and 13,835 children, which also concluded that the self-report version is not valid and found stability studies of the observer version scarce (van IJzendoorn, Vereijken, Bakermans-Kranenburg & Riksen-Walraven, 2004). The report states that limit too. An evidence standard that exempted its author's own instruments would not be a standard.

1.5.6 Scope, and what the State does not record

The most important limit on any study of Texas custody outcomes is that the State does not publish them. No public Texas dataset found for this report records conservatorship or possession outcomes by the sex of the parent, by whether the order was agreed or contested, or by judge. The Office of Court Administration reports family cases by type and manner of disposition, and the Government Code requires it to report, court by court, three performance measures: the clearance rate, the average time from filing to disposition, and the age of the pending caseload. Tex. Gov't Code § 72.083(b). None describes what happened to a child.

What the State records shows how custody is decided, though not what is decided. In fiscal year 2025 the district courts disposed of 282,099 family cases: about 31 percent by agreed judgment, about 24 percent after a non-jury trial, and 109, four hundredths of one percent, by jury verdict. In 85,539 of them the petitioner was self-represented. These are court-reported counts (Grade C). They show that the schedule under which a Texas child lives after separation is set by agreement or by one judge in virtually every case; they do not show how judges decide. The only sex-specific figure the State has published is the Attorney General's statement that about 10 percent of the noncustodial parents in its child support caseload are mothers, which describes that caseload and not contested custody outcomes.

The report treats this absence in three ways. It makes no claim about outcomes by parent sex or by court, and it does not use the figures that circulate on that question. It rests its argument on what can be read: the Code, the procedures it prescribes, the State's budget and agency data, and the research. Those sources show that the system lacks the safeguards the stakes require, whatever the pattern of outcomes. And it treats the absence of data as a finding. A system that does not record what it decides cannot claim that its decisions serve the standard it professes, and cannot be corrected when they do not. The transparency chapter's first recommendation is therefore a data recommendation, the precondition for testing every other claim, including this report's.

1.6 The Argument in Outline

The argument proceeds from the child to the remedy. Chapter 2 sets out what attachment science, the research on caregiving continuity, the causal evidence on father absence, the research on shared parenting and overnight care, and a Swedish study that used the random assignment of judges to estimate the effect of joint custody show about what children need from the decisions that rearrange their parents' lives. Chapter 3 reads the Code as written, from Article I, Section 37 and the best-interest standard through conservatorship, possession, the jury right, and no-fault divorce, measuring it against its own contradictions and against the equal-parenting statutes of other States. Chapter 4 follows the Code into operation: temporary orders reviewable only by mandamus, referral to associate judges and the Title IV-D courts, the short window for de novo review, findings owed only on request, records, fee shifting, contempt, and time standards. Chapter 5 follows the money through Titles IV-D and IV-E, their match rates, measures, and incentives, the economics of fees, and the cost of family fragmentation to Texas. Chapter 6 examines how contested decisions are made: custody evaluations and the Standard Protocol Evaluation the report proposes, the testing of abuse allegations, ex parte protective orders, what the partner-violence evidence does and does not show, and parental alienation understood as behaviors rather than a diagnosis. Chapter 7 takes up child support, from its architecture to retroactive support, genetic testing, enforcement, and contempt, and sets the author's positions against the federal floor. Chapter 8 turns to the State as custodian: removal standards, the causal research on foster care, federal reviews, the Department's self-evaluation, the federal foster care litigation, and spending against outcomes. Chapter 9 applies the symmetry rule to organized interests and judicial education; Chapter 10 addresses immunities, existing offenses, judicial discipline, civil remedies, nondisclosure agreements, and false reports; Chapter 11 sets out the transparency the system requires; and Chapter 12 lays the legislative pathway, from the first bills by section to the joint resolutions, federal and interstate constraints, and the Model Family Code. Chapter 13 states the strongest objections and answers them, and the Conclusion and Limits state what the report has established and what it has not.

1.7 What follows

The State has asked whether its family law serves the child by the State's own measure. This chapter has fixed that measure, the method of testing against it, and the three lenses through which the test is made. The first lens carries the others, because the case for procedure and the case against misaligned incentives both rest on the claim that a child's continuing relationship with each fit parent matters to the child. Chapter 2 tests that claim against the developmental and causal evidence, at the grade each finding supports. # Chapter 2. The Child

Chapter 1 set the question and the method. Texas has found that it is in the State's best interest to promote the raising of children in stable, two-parent households and that the State must promote evidence-based pathways to that end (H.B. 3284, § 2). Chapter 1 also fixed the rule for reading evidence: randomized and natural experiments, and meta-analyses of them, may carry causal language; prospective, sibling, and instrumental designs may carry the language of

prediction; cross-sectional associations may carry only the language of association; and expert consensus may only illustrate. This chapter applies that rule to the first lens of the report, developmental science, and asks a narrow question. What does the evidence establish, at its proper grade, about what children need from their parents?

The answer this chapter defends, at the grades stated in each section, is that the evidence establishes a principle of continuity rather than a preference for either parent. Randomized trials show that the quality of caregiving changes children's attachment security and their later functioning. Longitudinal and meta-analytic work shows that the caregiving relationship is moderately stable and responsive to what caregivers do. The strongest designs on father absence show that losing a resident parent carries harm that is real and smaller than advocates on one side claim. The research on shared parenting shows a small, consistent association between substantial time with both parents and better adjustment, and the first study of custody allocation to use random assignment of judges, a working paper not yet peer reviewed, produces a causal estimate that joint legal custody improved children's test scores at the margin of contested cases. None of this licenses a prediction about an individual child, and the chapter states where the evidence stops. What survives the whole review is a single developmental principle that the rest of the report applies: the law should preserve the continuity of each fit parent's caregiving relationship with the child.

2.1 Attachment as the construct

Attachment theory, associated with John Bowlby and Mary Ainsworth, supplies the framing of this chapter and none of its weight. The theory holds that a young child organizes behavior around particular caregivers who serve as a haven when the child is frightened and a base from which the child explores. The report does not rest on the theory's founding texts. It rests on the measurement literature that grew from them, because a legislature cannot act on a construct that cannot be measured reliably, and because the claims that matter for law are claims about what measured attachment predicts and what changes it.

That distinction has practical force. The word "attachment" appears in Texas law. The Family Code directs a court setting possession for a child under three to consider "the child's need to develop healthy attachments to both parents" (Tex. Fam. Code § 153.254(a)(8); Family Code text as rendered Dec. 13, 2025). The word appears in custody reports, in parenting-plan literature, and in courtroom argument. It is used loosely in most of those places. A construct that the Code names as a factor deserves a definition anchored in instruments whose reliability and validity have been tested, and the first task of this chapter is to say which instruments meet that test and how far.

The author has a stake in this question and discloses it. He codes the Adult Attachment Interview, administers the Attachment Q-Sort, and provides caregiver training commercially. For that reason every recommendation in this report that touches attachment measurement is stated as a vendor-neutral standard, validated attachment measures scored by reliability-certified coders, and no product or provider is named.

2.2 The instruments and what they measure

Three instruments carry meta-analytic support: the Strange Situation for infants, the observer-sorted Attachment Q-Sort for infants and preschool children, and the Adult Attachment Interview for parents. Main, Hesse and Hesse (2011) describe these three as the methods that come closest to providing scientific evidence about an individual's current attachment status. In the same article they caution that classifications produced by uncertified or untrained coders, by procedures that merely resemble the Strange Situation or the Adult Attachment Interview, or by self-devised systems do not carry the validity the meta-analyses established, and they note that validation for custody contexts is still developing. The endorsement and the caution belong together. Together they describe a standard, not an instrument.

2.2.1 The Adult Attachment Interview

The Adult Attachment Interview, coded under the system of Main, Goldwyn and Hesse (2003), classifies an adult's state of mind with respect to attachment from a transcript of a semi-structured interview about childhood relationships. Its central claim to validity is prediction. In a meta-analysis of 18 samples (N = 854), van IJzendoorn (1995) found that parents' interview classifications predicted their infants' Strange Situation classifications with a combined effect size of 1.06, with 75 percent correspondence across the secure and insecure categories (kappa = .49, N = 661), and that interview classifications predicted parental responsiveness across 10 samples (N = 389, effect size .72). The same paper named what it called the transmission gap: the pathway from a parent's state of mind to the infant's behavior is only partly explained by measured parental sensitivity.

Later syntheses report smaller transmission effects, and the honest statement gives all three figures. Against the 1995 correlations of .47 for the secure-autonomous classification and .31 for the unresolved classification, Verhage and colleagues (2016) reported .31 and .21 across 95 samples (N = 4,819), and a 2018 analysis of 58 studies (4,396 dyads) reported .29, weaker under conditions of risk (Verhage et al., 2016, 2018). The direction has held across three decades of studies. The size is moderate. A group-level association of that size describes populations of parents and children, and it tells a court nothing certain about one parent.

The interview's stability is better established than its predictive size. Over two months, Bakermans-Kranenburg and van IJzendoorn (1993) found 78 percent agreement on the three main classifications (kappa = .63), stable across interviewers and independent of autobiographical memory, verbal and performance intelligence, and social desirability; the unresolved category was less stable. Over three months, Sagi and colleagues (1994) found 90 percent agreement (kappa = .79) with no interviewer effects, in a sample of 59 Israeli students selected for high ability, a limit the authors state themselves. The normative distribution is known from more than 200 studies and over 10,500 interviews: among North American non-clinical mothers, 58 percent are classified secure, 23 percent dismissing, and 19 percent preoccupied, with 18 percent additionally classified unresolved (Bakermans-Kranenburg & van IJzendoorn, 2009). That distribution matters for law in one specific way. If a majority of ordinary,

non-clinical parents are secure, then a large minority of ordinary, fit parents are not, and an insecure classification cannot be read as unfitness.

2.2.2 The Attachment Q-Sort and the Strange Situation

The Attachment Q-Sort, in the observer version described by Waters (1995) and scored against the criteria of Pederson and Moran (1995), asks a trained observer to sort descriptive cards after watching a child with a caregiver in ordinary settings. Its validity was tested in a meta-analysis of 139 studies and 13,835 children (van IJzendoorn et al., 2004). The observer version converged with Strange Situation security (r = .31), predicted caregiver sensitivity (r = .39), and was only weakly associated with temperament (r = .16), which supports the claim that it measures the relationship rather than the child's disposition. The self-report version, completed by the parent, did not meet the same test. The authors concluded that the observer version is valid and the self-report version is not. The distinction is not academic: a Q-sort completed by an interested parent in a custody dispute is the version the meta-analysis did not support. The same review found few stability studies of the observer version (mean r = .28 across four).

An updated meta-analysis of 245 studies and 32,426 children found that the observer Q-Sort's validity rose with the length of observation: where observation exceeded 180 minutes, its correlation with Strange Situation security was .39 and with parental sensitivity .44 (Cadman, Diamond & Fearon, 2018, accepted manuscript, Tables 3 and 5). The finding is a design rule. A short visit produces a weaker measure, and a law that relies on a measure can say how long the observation must be.

Disorganized attachment, the classification for infants whose behavior toward a caregiver under stress lacks a coherent strategy, has its own evidence base: nearly 80 studies and more than 6,000 infant-parent dyads, with reliability and discriminant validity established (van IJzendoorn, Schuengel & Bakermans-Kranenburg, 1999). The stability of disorganization itself is modest. That fact answers the charge that classification is too subjective for any use near a courtroom, and it also limits what a single classification can be asked to prove.

What follows from the measurement literature is a narrow and firm conclusion. Attachment can be measured reliably, the measures predict caregiving and child behavior at the level of groups, and the validity of a classification depends on the instrument, the observation, and the coder. A custody process that invokes attachment without those conditions is invoking a word, not a measurement.

2.3 Continuity and change

If attachment were fixed in infancy, the law would face a grim choice: protect the first relationship at any cost, or treat later disruption as irrelevant because the damage was done. The evidence supports neither. It shows a relationship that is moderately stable and responsive to caregiving.

The best-known longitudinal test followed 50 infants from the Strange Situation to the Adult Attachment Interview about twenty years later. Classifications matched on the secure versus

insecure distinction 72 percent of the time, rising to 78 percent where no negative life events had been reported; in that group, 85 percent of infants classified secure were classified secure as young adults (Waters, Merrick, Treboux, Crowell & Albersheim, 2000). This is continuity across two different measures across two decades. It is not test-retest reliability of the interview, and earlier materials that labeled it so were wrong. The finding has a second half that matters as much as the first: where negative life events intervened, continuity fell. Events that disrupt caregiving move the relationship.

Fraley's (2002) meta-analytic modeling of attachment security across the first 19 years of life found moderate stability, neither the near-perfect continuity a prototype model would predict nor the drift a purely situational model would predict. The English and Romanian Adoptees study found deprivation-specific patterns, including disinhibited attachment, with the duration of deprivation driving outcomes, and Rutter (1999) cautioned that earlier claims of irreversibility were overstated. The defensible statement is that the effects of severe early deprivation persist in many children, not that they are permanent.

What follows is that caregiving continuity matters because the relationship carries forward, and that caregiving change matters because the relationship responds. A legal system that disrupts a fit parent's caregiving cannot defend the disruption on the ground that early attachment is already settled, and it cannot defend it on the ground that attachment does not persist. Both defenses fail on the same evidence.

2.4 What insecurity and disorganization predict

The question a legislature should ask of attachment research is not whether insecurity is bad. Insecurity is common among ordinary children and is not a disorder. The question is whether, across a population, the quality of the early caregiving relationship predicts later difficulty, and by how much.

The meta-analysis of externalizing problems by Fearon and colleagues (2010), pooling 69 samples and 5,947 children, answers with figures that are modest and consistent (Child Development 81(2), 435 to 456). Insecure attachment predicted later externalizing symptoms with an effect of d = 0.31, and disorganized attachment with d = 0.34. Avoidance alone (d = 0.12) and resistance alone (d = 0.11, not significant) predicted less. The predictive association did not diminish with the age at which symptoms were measured. A companion meta-analysis by Groh and colleagues (2012) extended the question to internalizing symptoms; none of the figures given here is drawn from it. These are Grade A syntheses of longitudinal studies; the individual studies are prospective, and the appropriate verb is "predicts," not "causes."

An effect of d = 0.31 can be translated into terms a policy director can use. Under the usual normal-distribution assumptions, it means the average child in the insecure group scores higher on externalizing symptoms than about 62 percent of children in the secure group, and that a randomly chosen insecure child scores higher than a randomly chosen secure child about 59 percent of the time. That arithmetic shows why the effect is modest for an individual. It also shows why it compounds across a population. A shift of a third of a standard deviation in the

average moves a disproportionate number of children across any clinical threshold set at the tail of the distribution, because the tail is where small shifts in the mean make the largest proportional difference. A State that acts on millions of children through one statute acts at the level of populations, and at that level a modest, replicated effect is a large public fact.

The limit is stated with the finding. These effects describe groups. An individual secure child may struggle and an individual insecure child may thrive. The research says the odds move, not that the outcome is fixed, and a report that asked the Legislature to treat any child's classification as a prophecy would misstate the evidence it relies on.

2.5 The randomized evidence that caregiving changes outcomes

The strongest evidence in this chapter is not correlational. Three randomized trials show that changing the caregiving a child receives changes the child's attachment and the child's mental health. This is the Grade A foundation of the report's thesis, and its limits are stated with it.

The Bucharest Early Intervention Project randomly assigned young children living in Romanian institutions either to continued institutional care or to foster families recruited and supported by the study. Children with any history of institutional rearing had more psychiatric disorders than children never institutionalized (53.2 percent against 22.0 percent). Random assignment to foster care rather than continued institutional care cut internalizing disorders by half (22.0 percent against 44.2 percent) (Zeanah et al., 2009). A companion analysis found that the quality of caregiving at 30 months predicted psychopathology at 54 months, and that the association was mediated by attachment security at 42 months (McGoron et al., 2012). The design isolates the cause. The children did not select their placements; a random process did. What changed was the caregiving, and the caregiving changed the outcome.

The Attachment and Biobehavioral Catch-up program was tested in a randomized trial with 120 children of parents at high risk for neglect. In the intervention group, 32 percent of children were classified disorganized and 52 percent secure, against 57 percent disorganized and 33 percent secure in the control group (Bernard et al., 2012). A brief, manualized intervention directed at the parent's behavior produced a change in the child's attachment that a coder blind to condition could see.

The third trial addressed maltreating families directly. Cicchetti, Rogosch and Toth (2006) randomly assigned 137 maltreating families to infant-parent psychotherapy, to a psychoeducational parenting intervention, or to the community standard of usual child-welfare services, with 52 non-maltreating families as a comparison. Both active interventions produced substantial increases in secure attachment by 26 months. The community standard group did not. At baseline, the maltreating mothers had reported more abuse in their own childhoods and more insecure relationships with their own mothers. The result carries a quiet indictment. Usual services, the thing a child-welfare system already buys, did not move the outcome that the targeted interventions moved.

The limit of all three trials must be stated first. Their samples were institutionalized children and families at high risk of neglect or already maltreating. None studied children of fit parents in

custody disputes. The trials therefore do not show that any particular custody order changes any particular child's attachment. What they show is the causal structure the rest of the report relies on: caregiving is a cause, not merely a correlate, of a young child's attachment security and later psychiatric outcomes. The inference to custody is an inference, and the report labels it so. If improving caregiving improves outcomes, then a legal process that removes a fit parent's caregiving from a child's life is removing a cause of the child's welfare, and the State that orders it carries the burden of showing why.

2.6 Genes and environment

A causal claim about caregiving must answer the behavior-genetic objection: perhaps secure parents have secure children because they share genes, not because of what the parents do. The evidence on this point divides by age, and both halves belong in the record.

In infancy, a twin study of mother-infant attachment found that shared environment, not genes, accounted for most of the variation in attachment security, with a genetic contribution near zero, and found no genetic or shared-environment effect for disorganization (Bokhorst et al., 2003, as reported in its published summary). Infant attachment security, in other words, looks like what attachment theory says it is: a property of the relationship the child has been given.

In adolescence the picture changes. A twin study of adolescent attachment found heritability of about 40 percent (Fearon, Shmueli-Goetz, Viding, Fonagy & Plomin, 2014). That is counterevidence to any claim that attachment is purely environmental across childhood, and it is cited here beside the infancy finding because the two together are the honest picture. The randomized trials in section 2.5 do not depend on either twin study, because random assignment removes genetic confounding by design. What the twin studies add is a developmental caution: the early years are when caregiving most plainly shapes the relationship, and later outcomes reflect a mixture of what the child brings and what the child receives.

2.7 The caregiver as a regulator of stress

A second line of evidence describes how a caregiver's presence acts on a child's stress physiology. The Project has read this literature only at the level of published abstracts and journal records, so it is stated briefly and carries no figure.

Gee and colleagues (2014), in a neuroimaging study, reported that a mother's presence dampened amygdala reactivity in children and was associated with a more mature pattern of connectivity between the amygdala and the medial prefrontal cortex, an effect seen in children and not in adolescents. Hostinar, Sullivan and Gunnar (2014), reviewing the human and animal literature on social buffering of the hypothalamic-pituitary-adrenal axis, concluded that attachment figures act directly on the stress system and that this buffering is potent through childhood and wanes in adolescence. Both findings are consistent with the behavior-genetic pattern above: the child's caregivers matter most, and most directly, when the child is young.

What follows is limited to what the abstracts support. These studies describe a mechanism

through which the caregiving relationship may operate. They do not measure the effect of separation from a parent, and the report rests no recommendation on them alone.

2.8 Father absence, by strength of design

The literature on children raised apart from their fathers has been badly served by its advocates. Fact sheets circulate multipliers that attach large ratios to suicide, incarceration, dropout, and other outcomes, and those figures trace, where they can be traced at all, to compilations that cite newspaper columns beside studies. This report uses none of them. The question it asks instead is what the strongest designs show.

2.8.1 The rigorous-design review

McLanahan, Tach and Schneider (2013), reviewed 47 studies that used designs capable of addressing selection: lagged dependent variables, growth curves, individual and sibling fixed effects, natural experiments, and propensity scores. Their conclusion is the anchor for this section. Studies with rigorous designs continue to find negative effects of father absence, and those effects are smaller than the effects reported by conventional cross-sectional studies. The evidence was strongest and most consistent for externalizing behavior, high school graduation, and adult mental health. It was weak for cognitive outcomes and for adult economic outcomes. On timing, the authors were cautious, writing that effects “may be more pronounced” when father absence occurs in early childhood. They also concluded that selection plays a role: some of the gap between children with and without resident fathers reflects differences between the families before the father left.

That review cuts against both camps in the public argument. It refutes the claim that the father-absence gap is entirely selection, because the gap survives designs built to remove selection. It refutes the claim that the circulating multipliers describe the effect of father absence, because the rigorous estimates are smaller. A legislature that wants an evidence-based pathway has one here: the loss of a resident parent produces measurable harm in the outcomes the review names, and the size of that harm is moderate.

2.8.2 The sibling design and its null result

Markowitz and Ryan (2016), compared siblings within the same families in the Children of the National Longitudinal Survey of Youth (6,141 youth in 2,330 families), exploiting the fact that siblings were different ages when their father left. The design removes everything the siblings share: their mother, their genes in large part, their neighborhood. Within families, father departure between ages 6 and 14 raised adolescent delinquency ($b = 0.13$, about $d = 0.20$, a small effect). Departure in early childhood showed no association with adolescent delinquency, and the within-family estimates for depressive symptoms were not significant. The authors read the pattern as pointing to reduced parental monitoring in adolescence as the mechanism.

The early-departure result is a null finding, and the report states it without softening. Opponents of the report’s thesis will cite it for the proposition that a father’s early departure

does no lasting harm. The design does not support that proposition, and the reasons are in the study itself. Every child in the comparison lost a resident father; the design tests when departure matters among children who all experienced it, not whether a present father matters. It did not measure the father's contact after departure, the child's attachment to either parent, or outcomes beyond adolescence. Its sample was disadvantaged, and many siblings were half siblings. The finding is a statement about timing and two adolescent outcomes, and it is not a statement about attachment.

The timing question is itself unsettled. Culpin and colleagues (2013), in a United Kingdom birth cohort of 5,631 children, found that father absence in the first five years was associated with greater odds of depressive symptoms at age 14, particularly in girls, while absence in middle childhood was not (an observational cohort with statistical controls). That runs opposite to Markowitz and Ryan on depression. The two findings come from different designs, countries, and outcomes, and the report records the disagreement rather than choosing the convenient answer.

2.8.3 Incarceration, household type, and child support

Harper and McLanahan (2004) followed young men in the National Longitudinal Survey of Youth 1979 from adolescence into adulthood and found, in the published abstract, that youths in father-absent households faced elevated risk of incarceration after accounting for teen motherhood, parental education, race, and poverty, and that youths in stepparent households faced the highest risk. The working-paper version, adds detail that has not been checked against the published tables and is reported here as working-paper detail. In that version, 13 percent of youths from non-intact families and 5 percent from intact families were incarcerated by adulthood; the odds for youths in mother-only households were 2.4 after background controls and 2.1 after income and family size; youths in father-only households showed no elevated risk, though the cell was small; and receiving child support made no measurable difference to the risk (Harper & McLanahan, 1999). The stronger checks did not hold: the instrumental-variables estimate lost significance, and the sibling model, after losing more than 95 percent of its observations, was positive but not significant. The authors called their results suggestive, and the report treats them as Grade C evidence.

Two features of that study deserve a legislator's attention even at Grade C. The father-only result is evidence against a default that treats one parent as the natural custodian; the cell is small, and the authors suggested these fathers may be unusually suited to the role. And the child support result, preliminary by the authors' own description, is a reminder that a payment is not a relationship. A system that measures a parent's contribution by the check rather than by the caregiving is measuring the wrong thing, a point that returns in Chapters 5 and 7.

2.8.4 Divorce law as a natural experiment

Economists have used the staggered adoption of unilateral divorce across the States as a natural experiment. Gruber (2004) found, in a study graded B (section 3.11), that adults who were exposed as children to unilateral divorce regimes were less educated, had lower family incomes,

married earlier but separated more often, and had higher odds of adult suicide, with the effect building over about eight years of exposure.

The counterevidence comes from the same method and must be stated beside it. Stevenson and Wolfers (2006), found that after States adopted unilateral divorce, female suicide fell by 8 to 10 percent on average over twenty years and by 16 to 19 percent in the long run, with no effect on male suicide; that spousal violence fell in both directions, from baselines of 11.7 percent for husband-to-wife and 11.9 percent for wife-to-husband violence; and that women murdered by intimate partners fell by about 10 percent, an estimate whose timing the authors themselves treat as weak. They identify two channels: the ability to leave, and the bargaining power that the ability to leave confers inside a marriage. Their violence data rest on two cross-sections of intact marriages, and they measure adults, not children.

The two studies do not contradict each other so much as measure different people. Gruber measures children; Stevenson and Wolfers measure spouses. Together they say that the law of divorce reaches both, and that a reform designed for one must account for the other. Chapter 3 takes up the Code's divorce grounds and Chapter 13 answers the objection in full. For this chapter, the point is that the best available quasi-experimental evidence on divorce law, graded B, finds effects on children that run in the direction the report's thesis predicts, and effects on adults that a responsible reform must preserve.

2.9 Shared parenting

If the loss of a resident parent carries harm, the natural question is whether preserving substantial time with both parents after separation carries benefit. The evidence answers yes, with modest force, at the level of association, and it now includes one causal estimate.

2.9.1 The meta-analyses

Bauserman (2002), pooled 33 studies comparing children in joint custody with children in sole custody (1,846 sole-custody and 814 joint-custody children). Children in joint custody scored higher on adjustment, with an effect of d = .23 (95 percent confidence interval .14 to .32), and did not differ from children in intact families. The author stated plainly that the design cannot show a causal role for the arrangement, and 21 of the 33 studies were unpublished dissertations. Translated, an effect of .23 places the average joint-custody child at about the 59th percentile of the sole-custody distribution, and gives a randomly chosen joint-custody child about a 56 percent chance of scoring higher than a randomly chosen sole-custody child.

Baude, Pearson and Drapeau (2016) reported a meta-analysis restricted to joint physical custody with an effect of d = .109 favoring joint physical custody. The Project has read that figure in the abstract and in secondary reviews that report it (Emery, 2021; Riser, 2025), not in the primary article, and the secondary sources disagree about whether it pooled 17 or 19 studies. The effect is weak, and the report states it exactly: it places the average child in joint physical custody at about the 54th percentile of the sole-custody distribution, with about a 53 percent chance of scoring higher. Two reviewers report that the advantage in that meta-analysis was clearest

where time was divided equally (Langmeyer et al., 2022; Nielsen, 2018); because the primary has not been read, the report attributes that pattern to them and does not adopt it as its own finding.

2.9.2 The reviews and the selection objection

Later reviews agree on direction. Nielsen (2018), counting results across 60 studies, found that children in joint physical custody had better outcomes on all measures in 34, and that the advantage generally held in the 25 studies that controlled for income and the 19 that controlled for parental conflict. A vote count ignores effect size and study quality, and Nielsen is a known advocate of shared parenting, so the review is Grade C and is cited as such. Steinbach (2019), reviewing 40 studies, found children in joint physical custody often equal to, and sometimes slightly better off than, children in sole custody. Vowels and colleagues (2023), in a systematic review of 39 studies from 2010 to 2022, found children in shared arrangements consistently doing better than children in lone arrangements and doing as well as children in intact families in about three quarters of the studies. A large Swedish survey of 147,839 children aged 12 and 15 found fewer psychosomatic problems among children in joint physical custody than among children living mostly or only with one parent (Bergström et al., 2015), and its authors called for longitudinal confirmation because the data could not date the separation.

The strongest objection is selection. Parents who share custody are better educated, earn more, and fight less (Steinbach, 2019). In a representative German sample, shared custody showed no link to child adjustment at all once those differences were taken into account (Langmeyer, Recksiedler, Entleitner-Phleps & Walper, 2022). A Norwegian government systematic review that admitted only longitudinal cohort studies found the evidence insufficient to draw clear conclusions either way (Johansen et al., 2022, read at the level of its English summary). Emery (2021) reports a Dutch study in which a father's post-separation involvement benefited children when he had been involved before separation and was associated with more problems when he had not, and it is the strongest contrary evidence to a presumption that ignores what the parent did before the suit.

The answer to the selection objection is not to deny it. Braver and Votruba (2018) examined the better-controlled studies and concluded that joint physical custody "probably does cause benefits to children on average." They chose the word "probably," and they meant "on average." Their causal inference rests largely on correlational studies with extensive controls, so the report grades it as reasoned expert judgment rather than proof. The defensible statement for a legislature is that the evidence shows an association, small in size, that survives the usual controls in some studies and disappears in others, as the German and Norwegian reviews above show, and had not, before 2026, been shown by any experimental design to be caused by the arrangement itself. The one design that now does so concerns mostly joint legal custody, not equal time.

2.9.3 Conflict

Conflict qualifies the association and does not reverse it. In a German sample of 1,087 post-

separation families, the advantage of joint physical custody held where conflict between the parents was low, and children's mental health in the two arrangements was quite similar where conflict was above average (Augustijn, 2021). The Australian national data show the same narrowing for preschool children: by ages four and five, differences by care arrangement disappeared once parenting warmth, conflict, and income were taken into account (McIntosh, Smyth, Kelaher, Wells & Long, 2010). Neither study shows that shared care harms children of parents in conflict. They show that its advantage shrinks there, and that conflict and the quality of parenting carry much of the weight.

That pattern matters for the design of law in a way that is easy to miss. If conflict, rather than the schedule, drives much of the harm, then a procedure that raises conflict harms children whatever schedule it produces. A custody process built as a contest, in which each parent must diminish the other to win, is a conflict-generating machine aimed at the variable the research identifies as most damaging. The point returns in Chapter 4.

2.9.4 The earlier joint custody laws

The American joint custody statutes of the 1970s through the 1990s were adopted at different times in different States, and economists have studied them as a natural experiment. Using state data from 1969 to 2003, Halla (2013) found that these laws raised marriage rates and found no convincing effect on divorce, correcting an earlier report of a reduction in divorce (Brinig & Buckley, 1998). Halla's later review reports fewer husband-on-wife domestic violence incidents and lower male suicide after the laws, and it also reports two unpublished working papers finding that children who grew up in States with joint custody laws completed somewhat less schooling, a result Halla called worrisome and could not explain (Halla, 2015). These were mostly joint legal custody laws rather than equal-time laws, and the child-outcome papers are unpublished, so their weight is limited. They are reported because the same body of evidence that supports shared parenting contains its most serious caution, and a report that omitted it would not deserve to be believed on the rest.

2.10 Overnights for infants and toddlers

The sharpest dispute in this literature concerns the youngest children: whether infants and toddlers should spend nights in both parents' homes. The dispute has shaped Texas law, which sets a separate regime for children under three (Tex. Fam. Code § 153.254) and declares that the standard possession order "is designed to apply to a child three years of age or older" (§ 153.251(d)). The evidence on which both sides rely is thin, correlational, and contested, and it should be described study by study.

2.10.1 The studies

Solomon and George (1999), studied 145 infants aged 12 to 20 months: 44 with regular overnights with the father, 49 with no overnights, and 52 in married families. The overnight group was less secure and more disorganized with the mother than the married group, and

disorganization was tied to low communication between the parents, high conflict, and low maternal protection. The comparison that matters for a custody rule, overnight against no overnight among separated families, did not reach significance, as two later sources report. Comparing separated families with married families confounds the effect of overnights with the effect of separation itself.

McIntosh, Smyth and Kelaher (2013), analyzed a nationally representative Australian sample and found that, with parenting style, conflict, and socioeconomic factors controlled, more shared overnights at ages birth to one and two to three were associated with less settled, poorly regulated behavior with the primary parent, but not at ages four to five. The measures were parent reports, the groups small, and the design cross-sectional; the underlying government report records cells of 63 infants and 26 children aged two to three in shared care (McIntosh et al., 2010). Warshak (2014, 2015) has contested whether the measures captured attachment at all.

Tornello and colleagues (2013) used the Fragile Families sample. Among infants with weekly overnights, 43 percent were classified insecure at age three, against 25 percent of infants with daytime contact only and 16 percent with some overnights. Among toddlers the figure was 37 percent, with no significant direct comparison. On adjustment, one of 28 tests was significant, and it favored overnights. The attachment measure was an adapted Q-sort completed by the mother, which is the parent-completed form that the meta-analysis in section 2.2.2 did not validate. Emery (2021), a co-author, notes that 57 percent of the weekly-overnight group were not insecure.

Pruett, Ebling and Insabella (2004) reported that overnights neither helped nor harmed children aged two to three and were associated with benefit at four to six, with conflict and the parent-child relationship mattering more than the schedule (as reported by Warshak, 2014, and by Pruett, McIntosh & Kelly, 2014). A dissertation study of 24 children found that the age at which overnights began did not correlate with attachment security ($r = .119$, not significant), while the mother's emotional availability did predict it (Altenhofen, 2008). The sample is too small to bear weight, and the Q-sort was again completed by the mother.

On the other side of the ledger, Fabricius and Suh (2016), surveyed 116 young adults in a university sample about their parenting arrangements in childhood and found that overnights with the father at age two were associated with better young-adult relationships with both parents, controlling for later parenting time, parental education, conflict, disagreement over parenting time, age at separation, and sex, with no moderation by conflict. The design is retrospective, and the authors disclaim a causal reading. It is Grade C evidence pointing the other way.

2.10.2 What the consensus statements agree on

Two consensus documents frame the dispute. A report endorsed by 110 researchers and practitioners concluded that, in normal circumstances, the evidence supports shared residential arrangements, including overnights, for children under four, and that the evidence does not

justify postponing regular overnights with both parents (Warshak, 2014). The Australian authors replied that the report mischaracterized their study (McIntosh, Smyth & Kelaher, 2015), and Emery (2021) criticized the method of claiming consensus. A competing consensus, by Pruett, McIntosh and Kelly (2014), set out seven points; its sixth holds that the studies substantiate caution about high-frequency overnights in the first three years, especially where the child's security with a parent has not formed or the parents cannot agree, and that cautions against any overnights in the first three years have not been supported. Both are consensus statements, Grade D under the rule of Chapter 1, and they illustrate expert judgment rather than establish facts.

The international statement of attachment researchers adds a correction that matters for law. Forslund and colleagues (2022), write that claims of overnight harm stem in part from overreliance on Solomon and George (1999), whose own data showed a non-significant difference between overnight and no-overnight groups and identified conflict as the better predictor. The same statement recognizes that children form multiple attachments. For infants and young toddlers whose second caregiver had been markedly uninvolved, it recommends gradual adjustment before a fairly equal division of time.

Read together, the studies and the consensus documents converge on three propositions. No study shows that overnights as such harm young children once the quality of caregiving and the level of conflict are accounted for, and the one small study that tested the age at which overnights began (24 children, a mother-completed Q-sort) found no link, which is too little to rest a rule on. The cautionary findings, though correlational and contested, have not been refuted by stronger designs, and so the evidence does not support declaring that every infant should spend equal nights in two homes from birth. And both camps agree that the quality of each parent's caregiving and the level of conflict between the parents matter more than any schedule. Emery's own recommendation, from the cautionary side, is a schedule that preserves one secure attachment while building a second in the first year and moves toward more equal time as infants become toddlers (Emery, 2021).

What follows for a statute is a rule for individual decisions, not a calendar. The evidence does not support a categorical bar on overnights for young children, and it does not support a categorical mandate. It supports starting from substantial time with both parents, including overnights, built for the youngest children as a stepped schedule of increasing frequency and duration that moves toward equal time by the child's second year, and adjusting for an individual child on evidence about that child: each parent's caregiving, the conflict between the parents, and where an attachment question is genuinely raised, validated measures scored by reliability-certified coders. It also exposes a measurement problem. The attachment findings most cited on both sides came from parent-completed Q-sorts or survey items that were not validated as attachment measures. A legal system that adopted an age rule on that evidence would be legislating on the instrument the meta-analysis rejected. The research on infant overnights is itself the best argument for the measurement standard that Chapter 6 proposes.

2.11 The Swedish random-judge study

Every study in sections 2.9 and 2.10 compares families who chose, or were ordered into, different arrangements for reasons that may also affect their children. The Swedish study by Canessa, Dahl, Hasselqvist, Meghir, Niknami, Palme, Rainer, Rosenqvist and Xiao (2026) is the first in this record to break that link for custody allocation itself. It was released as Cowles Foundation Discussion Paper No. 2543 on July 9, 2026.

2.11.1 Design

Swedish custody disputes are assigned to district court judges at random, and judges differ in how readily they award joint custody: judges at the 10th percentile of that propensity grant it in 28 percent of cases, and judges at the 90th percentile in 48 percent. Because the judge a family draws is a matter of chance, and the judge's propensity predicts the ruling, the authors can compare otherwise similar families that differ only in the judge they drew. This is an instrumental-variables design built on random assignment, the same logic economists have used to study foster care placement, and under the rule of Chapter 1 it is Grade A in design, pending peer review. The main sample is 11,027 disputed cases involving 17,007 children, decided from 2005 to 2021, linked to national records on the children's schooling and prescriptions and the parents' earnings, prescriptions, and recorded suspicions of partner violence.

2.11.2 Findings

The authors estimate that joint custody raised children's scores on their first national test after the ruling by 0.47 standard deviations (0.36 in Swedish and 0.48 in mathematics), from a starting point well below the average for the children affected, and raised the value-added of the schools the children attended by 0.23 standard deviations. It had no significant effect on children's use of antidepressant, anti-anxiety, or attention-deficit medication. For fathers, joint custody raised the probability of earning above the 25th percentile by 17 to 25 percentage points in the first five years and reduced antidepressant use by 13 to 17 percentage points in the first three years. Mothers showed no systematic change in earnings or mental health. The study detected no increase in either parent being recorded as a suspect in intimate partner violence, though the authors describe that estimate as imprecise.

2.11.3 Limits

The limits of the study define what it can be used for, and the report states them as fully as the findings. First, it is a working paper and has not completed peer review. Second, its estimates apply to compliers in marginal cases: disputes in which judges could reasonably differ. The authors exclude cases in which every judge would refuse joint custody, such as cases of abuse, and they confine their conclusion accordingly, writing that "a modest expansion in the use of joint custody among disputed, marginal cases is likely to improve family welfare." They do not conclude that joint custody should be granted in all cases. Third, about 85 percent of the

disputes concerned legal custody, so “joint custody” in this study chiefly means joint legal custody, the Swedish default, rather than an equal division of time. Fourth, children’s mental health is measured through prescriptions, which capture severe problems only. Fifth, the violence estimates are imprecise, so the study cannot exclude an effect it did not detect. The Project’s read did not capture the standard errors of the main test-score estimate.

What follows is the most important empirical sentence in this chapter, and it carries its limits with it. In the one study in the record in which chance rather than family circumstance decided custody, giving both parents a continuing legal role in the child’s life is estimated to have improved the child’s schooling, did not detectably harm the child’s mental health, improved the father’s earnings and mental health, and left the mother unharmed. The finding is limited to contested cases at the margin, which is precisely where a legal presumption operates. A presumption does not decide the cases that every judge would decide the same way. It decides the close ones. The best causal estimate available, a working paper not yet peer reviewed, says that in the close ones moving toward joint legal custody helped children. It supports shared decision-making and bears only indirectly on equal time. The case for equal time rests on the meta-analyses, graded as association of modest force, and on the Code’s own text.

2.12 What the evidence does not show

A chapter that argues from evidence must state where the evidence stops. Four limits govern every finding above, and the report’s recommendations are built inside them.

The first limit is the difference between groups and individuals. Every association in this chapter, and every causal estimate, describes averages across populations. The attachment researchers’ consensus statement makes the point directly: current attachment measures have limited sensitivity and specificity for predicting an individual child’s development, and many insecurely attached children develop favorably (Forslund et al., 2022). Validity demonstrated for groups does not transfer automatically to an individual case, and validity under the stress of a custody dispute has not been tested (Forslund et al., 2022). The same statement acknowledges that assessments by trained, certified coders using validated instruments can improve prediction above chance, and that many instruments in common use have lower or unknown predictive validity. That is the comparison a legislature actually faces: not validated measures against certainty, but validated measures against the instruments and impressions courts use now.

The second limit concerns how attachment measures should be used in court, and on this point the report departs from the attachment researchers’ statement and says so. Forslund and colleagues (2022) conclude that assessments of caregiver behavior should take center stage; they record dissensus among the authors on using attachment-quality assessments in custody and child-protection decisions; and they characterize the use of such assessments to allocate custody time as ill-advised, because the benefit to a child of more time with the more secure parent is unknown, the validity of the measures during a dispute is unknown, and insecurity is probabilistic rather than pathological. The report agrees that caregiving behavior comes first, that no classification is a verdict, and that insecurity is not unfitness. It nonetheless keeps

validated attachment measures as one required input to a custody evaluation, beside direct assessment of caregiving, on the ground stated above: the alternative is not abstention from judgments about attachment but judgments made without validated instruments. That position is contested by leading researchers, and the report marks it as contested. Main, Hesse and Hesse (2011), who endorse certified use of the measures in family law, are the report's authority for it, and their own caution that validation for custody contexts is still developing is part of the record.

The third limit is the field's own disagreement. A survey of more than 75 attachment researchers on nine fundamental questions found what its authors called surprising diversity of view on key questions (Thompson, Simpson & Berlin, 2022, and introduction). A legal scholar sympathetic to empirical family law warns that one study, or a handful, is a thin reed, that researchers may carry biases, and that legal actors may not evaluate research well (Scott, 2020, read at the same level). Emery (2021) names scholar-advocacy bias as a risk in the shared-parenting literature, and the authors on both sides of the overnight dispute are identified with positions. The report's answer is to cite both sides together and to grade every study, its own allies' included.

The fourth limit is the absence of Texas data. No public Texas dataset reports custody and possession outcomes by parent, by court, or by representation, and the studies in this chapter come from other States and countries. The report does not concede that children in Texas develop differently from children in Sweden, Australia, or Ohio; the burden of showing that they do lies on whoever claims it, and Chapter 13 answers that objection. It records the data gap so that the State can close it.

What the evidence does not show is therefore as important as what it shows. It does not show that any individual child's outcome can be predicted from a classification or a schedule. It does not show that infant overnights cause insecurity, that they are harmless for every child, or that joint physical custody causes better outcomes in every family. It does not show that father absence explains the large gaps advocates attribute to it. And it does not show that the State can identify, in advance and with confidence, which fit parent a child can do without.

2.13 The developmental principle: continuity of each fit parent's caregiving relationship

The findings of this chapter, taken at their proper grades, converge on one principle. It is stated here because every later chapter applies it.

The principle rests on five pillars of evidence. First, caregiving is a cause: randomized trials show that changing the caregiving a young child receives changes the child's attachment and mental health (section 2.5). Second, the caregiving relationship persists and responds: attachment is moderately stable across childhood, and disruptive events reduce its continuity (section 2.3). Third, losing a resident parent produces harm that the strongest designs detect, smaller than advocacy claims and concentrated in behavior, schooling, and adult mental health (section 2.8). Fourth, preserving substantial time with both parents is associated with modestly better

adjustment, and the one random-assignment study of custody allocation, a working paper not yet peer reviewed, estimates a causal benefit of joint legal custody to children in marginal contested cases (sections 2.9 and 2.11). Fifth, children form attachments to more than one caregiver, the single psychological parent view has been rejected by the field's own consensus statement, and conflict and caregiving quality matter more than any schedule (sections 2.9.3 and 2.10.2).

From those pillars the principle follows. The law should preserve the continuity of each fit parent's caregiving relationship with the child. It should start every contested case from substantial time with both fit parents, including overnights, with a stepped schedule for infants that moves toward equal time by the child's second year, because that is where the group-level evidence points and where the Swedish estimate supports shared decision-making. It should adjust for an individual child only on evidence about that child, the caregiving each parent provides and the conflict between them, because that is where the evidence says outcomes are decided. It should treat procedures that raise conflict as harms in themselves. And it should place the burden of justification on whoever asks the State to diminish a fit parent's caregiving, because the evidence shows that caregiving is a cause of the child's welfare and does not show that courts can identify in advance which fit parent a child can do without.

The principle is not a claim that structure is destiny, that either parent is the natural custodian, or that a schedule can substitute for safety. Where a parent is not fit, the principle does not apply to that parent, and the protections the enacting States have written into their own equal-time statutes remain. The principle concerns fit parents. No source read counts how many parents in custody cases are fit, and the report does not assume the proportion.

Texas law already states something close to this principle as policy. The Family Code declares that the public policy of the State is to "assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child" and to "encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage" (Tex. Fam. Code § 153.001(a)(1), (3)). It declares a policy "to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child" (§ 153.251(b)). For the youngest children it directs the court to weigh "the effect on the child that may result from separation from either party" and "the child's need to develop healthy attachments to both parents" (§ 153.254(a)(2), (8)). The Code, in short, has read the conclusion of this chapter and written it into its policy sections. Whether it has written it into its operative sections is a different question.

2.14 What follows

The developmental evidence establishes a principle, continuity of each fit parent's caregiving relationship, and Texas has already declared that principle as its public policy. Chapter 3 turns from the child to the Code as written and asks whether the operative provisions that govern conservatorship, possession, and divorce carry out the policy the Code announces, or whether

the Code states the principle in one section and defeats it in the next. # Chapter 3. The Code as Written

Chapter 2 established what the developmental record shows about children: that the quality and continuity of caregiving predict later outcomes, that children form attachments to more than one caregiver, and that randomized trials show improving caregiving improves attachment security. Those are findings about groups of children, graded by design, and Chapter 2 stated their limits. This chapter asks a narrower and more uncomfortable question. Leave the science aside for a moment and read the law on its own terms. Does the Texas Family Code, taken at its word, hold together?

It does not. The Code announces a constitutional right and then allocates it by the lowest standard of proof the civil law knows. It declares a public policy of frequent and continuing contact with both parents and then presumes, as the best interest of the child, a schedule that the same section describes as a reasonable minimum. It instructs the court that the best interest of the child shall always be the primary consideration, and then declines, across 134 sections, to say what it is. It gives the parties a jury and then forbids the jury to decide how much time the child spends with each parent. It requires a written statement of reasons when a judge departs from the standard schedule, but only if a party asks, and only for departures. And it permits either spouse to end a marriage without stating a reason, in a State whose Legislature has found that lasting marriage is in the State's best interest.

Each of these is a contradiction inside the text, not a dispute about values. This chapter documents them section by section, quoting the Code wherever the quotation can carry the argument. Statute text is from the Legislature's Family Code as rendered Dec. 13, 2025, which reflects the 89th Legislature's 2025 amendments; the Texas Constitution is quoted from the Legislature's text rendered July 31, 2026. The chapter then sets the Texas design beside the five States that have adopted an equal-parenting starting point, and closes with the divorce question in full, including the strongest evidence against the author's own recommendation.

3.1 The Right the Constitution Names

On Nov. 4, 2025, the people of Texas added Section 37 to the Bill of Rights. It reads in full:

> "To enshrine truths that are deeply rooted in this nation's history and traditions, the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing." Tex. Const. art. I, § 37.

Three features of the text matter for everything that follows. First, it pairs a responsibility with a right, and it places the responsibility first: the parent is to "nurture and protect." The text calls the right "corresponding" to that responsibility, so the right is presented as the means by which the duty is carried out. Second, it calls the right "fundamental," a word with settled weight in constitutional law. Third, it names no standard of review, no standard of proof, and no remedy.

The amendment tells a court what the right is. It does not tell a court what the State must show before taking it away.

Section 37 does not stand alone. Article I, Section 19 has provided since 1876 that “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” Article I, Section 15 declares that “The right of trial by jury shall remain inviolate,” subject to laws the Legislature passes “to regulate the same, and to maintain its purity and efficiency.” Article I, Section 13 provides that “All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.” Read together, the Bill of Rights now names a fundamental parental right, guarantees that no liberty or privilege is taken except by due course of law, and keeps the jury inviolate. The Family Code must be measured against that combination.

The Supreme Court of Texas has so far declined to say what Section 37 adds. In In re K.N., No. 24-0881 (Tex. June 5, 2026), the Court ordered supplemental briefing on the amendment, received it, and then held only that its decision, “driven by the unique facts of this particular record,” did not conflict with Section 37. It left “a more robust discussion of this new provision of our Constitution for another day, following appropriate percolation in the lower courts.” Id., slip op. at 17-18. On the same day, in In re H.S., No. 24-0307 (Tex. June 5, 2026), a five-justice majority cited Section 37 beside Holick v. Smith, 685 S.W.2d 18, 20 (Tex. 1985), and wrote that “we must strictly scrutinize termination proceedings and construe involuntary termination statutes strictly in the parent’s favor.” Slip op. at 18-19. The same opinion states that “The strong presumption is that termination is not in a child’s best interest.” Id. Two weeks later, a per curiam opinion noted in a footnote that the parental right “is now expressly enshrined in the Texas Constitution.” In re J.D.H., No. 25-0588, slip op. at 4 n.2 (Tex. June 19, 2026). No court of appeals opinion applying Section 37 was found in the search the record describes, which is a search failure and not proof that none exists.

The limits of these decisions must be stated first, because an opponent will state them. The “strictly scrutinize” language comes from Holick, decided forty years before the amendment, and H.S. cites Section 37 as confirming that language, not as the source of a new test. H.S. and Holick are termination cases. Nothing in K.N. or H.S. decides what Section 37 requires in a temporary order, a conservatorship ruling, or a possession schedule between two parents. Scholars writing in March 2026 argue the opposite risk, that the amendment may reach further against child-protection law than voters understood (Ziegler, Cahn, & Eichner, 2026). The honest reading is that Section 37’s operational content is undecided.

The federal floor is clearer and lower. A plurality of the United States Supreme Court called the parental interest “perhaps the oldest of the fundamental liberty interests recognized by this Court,” Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion), described “the fundamental right of parents to make decisions concerning the care, custody, and control of their children,” id. at 66, held that “there is a presumption that fit parents act in the best interests of their children,” id. at 68, and required a court to “accord at least some special weight to the parent’s own determination,” id. at 69. The same plurality declined to “define today the precise scope of

the parental due process right in the visitation context." Id. at 73. Santosky v. Kramer held that "before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence," 455 U.S. 745, 768 (1982), reaching that result by weighing the three factors of Mathews v. Eldridge, 424 U.S. 319, 335 (1976): the private interest, the risk of erroneous deprivation and the value of added safeguards, and the government's interest. Stanley v. Illinois added the sentence that should be engraved over every family courthouse: "Procedure by presumption is always cheaper and easier than individualized determination." 405 U.S. 645, 657 (1972).

Those holdings set a minimum, and they are narrower than advocates sometimes claim. Santosky is a termination case, and Rivera v. Minnich, 483 U.S. 574 (1987), held that a preponderance standard for establishing paternity does not violate due process. Troxel is a plurality decided as applied, and it states no standard of proof. Michael H. v. Gerald D., 491 U.S. 110, 124, 127 (1989) (plurality opinion), shows that the Court can decline protection where history does not recognize the relationship asserted. No holding read for this report applies a fit-parent presumption in a dispute between two fit parents, each of whom holds the same right. The argument of this chapter therefore does not claim that the Constitution commands a particular custody standard. It claims something the text alone can prove: that the Family Code allocates a right the Constitution calls fundamental through procedures the Code itself reserves, elsewhere, for interests it treats as lesser. That is an argument the Legislature can answer without waiting for a court.

What follows is that Section 37 is a sentence without machinery. The Supreme Court of Texas has said it will wait for the lower courts; the lower courts have not spoken. The Legislature is the first branch positioned to give the amendment operational content, by statute, in the sections examined below.

3.2 What the Code Says a Parent Is

The Family Code's own catalogue of parental rights is generous. Section 151.001(a) lists twelve, beginning with "the right to have physical possession, to direct the moral and religious training, and to designate the residence of the child," and including "the right to make decisions concerning the child's education" and "the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child." Tex. Fam. Code § 151.001(a)(1), (7), (10). The duties are listed beside them: "care, control, protection, and reasonable discipline," and support. Id. § 151.001(a)(2), (3). On its face the section anticipates Section 37 by thirty years: rights paired with duties, held by the parent.

Then comes subsection (d): "The rights and duties of a parent are subject to: (1) a court order affecting the rights and duties." Id. § 151.001(d). Every right in the list is thus as durable as the next order, and the Code places no standard of proof, no required finding, and no review route in the section that confers the rights. The rights are stated in Chapter 151; the means of taking them are scattered through Chapters 105, 153, 156, and 201, under standards examined below.

A parent reading Section 151.001 learns what he or she holds. A parent reading Section 151.001(d) learns that the holding is provisional.

The Code's statement of public policy is equally generous. Section 153.001(a) declares that "The public policy of this state is to: (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child; (2) provide a safe, stable, and nonviolent environment for the child; and (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage." The possession subchapter repeats the point in stronger words: "It is the policy of this state to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child." Id. § 153.251(b).

"Optimize" is a demanding verb. It means the best attainable, not the least tolerable. The policy as written fits closely with the developmental record set out in Chapter 2, which treats each caregiving relationship as worth protecting. The question for the rest of this chapter is whether the operative sections of the Code carry out the policy the Code declares. They do not, and the gap between Section 153.251(b) and Section 153.252 is the clearest place to see it.

3.3 The Best Interest of the Child: A Standard Without a Definition

Section 153.002(a) states the governing rule: "The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child." The words "best interest" appear 193 times in 134 sections of the Family Code as rendered, and the full phrase "best interest of the child" appears in 99 of those sections. Chapter 101, the definitions chapter for the title governing the parent-child relationship, does not mention it. The Code instructs the court that the best interest of the child shall always be the primary consideration, and then declines, across 134 sections, to say what it is.

What the Code offers instead are factor lists attached to particular decisions, and they do not agree with one another. Section 153.134(a) lists seven factors for court-ordered joint managing conservatorship, among them "whether each parent can encourage and accept a positive relationship between the child and the other parent," "whether both parents participated in child rearing before the filing of the suit," and "the geographical proximity of the parents' residences." Section 153.254(a) lists thirteen factors for a child under three, including "the caregiving provided to the child before and during the current suit," "the effect on the child that may result from separation from either party," "the child's need to develop healthy attachments to both parents," and "the child's need for continuity of routine." Section 153.256 tells a court ordering a nonstandard schedule that it "shall be guided by the guidelines established by the standard possession order" and "may consider" the child's age, developmental status, circumstances, needs, "and best interest." The last of these lists the best interest of the child as one factor in determining the best interest of the child.

The Code's most detailed best-interest list is not in the custody chapters at all. It is in Chapter

263, which governs children in the care of the Department of Family and Protective Services. Section 263.307(a) opens with a presumption: "the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest." Thirteen factors follow, directed at "whether the child's parents are willing and able to provide the child with a safe environment," including "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" and "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." Tex. Fam. Code § 263.307(b)(6), (10). The only statutory list that defines best interest at length, in other words, was written for the State as custodian and measures a parent's cooperation with the State.

Two other provisions show how lightly the standard binds when something else is at stake. A mediated settlement agreement that carries the required boldface statement and signatures is binding, and "a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law." Id. § 153.0071(d), (e). The court may decline to enter judgment only if it finds that a party was a victim of family violence whose decision-making was impaired, or that the agreement would give a registered sex offender or a person with a history of abuse household residence or unsupervised access, and in either case that the agreement is not in the child's best interest. Id. § 153.0071(e-1). A finding that an agreement is simply not in the child's best interest is not enough. For binding arbitration the burden runs the same way: the court "shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child," with the burden on the party seeking to avoid it. Id. § 153.0071(b). The primary consideration that must "always" govern yields, in these provisions, to the finality of a signed paper.

The strongest answer to this criticism deserves its full weight. An undefined standard gives a trial court room to respond to the particular child, and every State uses some version of it. The answer is that discretion is not the problem; unreviewable discretion is. A standard with no definition, applied by preponderance, explained only on request, and reviewed for abuse of discretion, does not individualize decisions so much as insulate them. What follows is that "best interest" in Texas is less a standard than a conclusion, and a conclusion needs a rule of decision behind it. The rest of the Code supplies that rule through presumptions, and the presumptions do the actual work.

3.4 Presumptions and the Weight of Proof

The Code's first presumption favors parents, and favors both of them. "Unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child." Tex. Fam. Code § 153.131(a). "It is a rebuttable presumption that the appointment of the parents of a child as joint managing

conservators is in the best interest of the child." Id. § 153.131(b). A parent not appointed managing conservator "shall" be appointed possessory conservator unless parental possession "would endanger the physical or emotional welfare of the child." Id. § 153.191.

The presumption of joint managing conservatorship sounds like shared parenting. It is not, and the Code says so in a section whose entire text is one sentence: "Joint managing conservatorship does not require the award of equal or nearly equal periods of physical possession of and access to the child to each of the joint conservators." Id. § 153.135. Worse, a court that appoints joint managing conservators "shall" designate one of them as "the conservator who has the exclusive right to determine the primary residence of the child." Id. § 153.134(b)(1). The presumption of joint conservatorship therefore arrives with a mandatory instruction to rank the joint conservators. Joint, in the Family Code, is a word for two parents of whom one is primary.

The second feature of the presumption is how it is removed. "A finding of a history of family violence involving the parents of a child removes the presumption." Id. § 153.131(b). Section 153.004(b) goes further: "The court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child." The same subsection makes it "a rebuttable presumption" that appointing that parent sole managing conservator or primary-residence conservator is not in the child's best interest "if credible evidence is presented." The protective purpose is legitimate, and nothing in this report would weaken protection for a child or parent who has been harmed. The difficulty is drafting. "Credible evidence is presented" is not a standard of proof; it describes an input, not a finding. A presumption that yields to a showing whose weight the statute never states is not a presumption in any useful sense. It is a suggestion. And because the same words apply to whoever presents them, the drafting gap serves no one: the parent with a true history to prove does not know what the court must find, and the parent facing a false one does not know what the court has found.

Access is treated differently again. The court "may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence" that there is a history or pattern of family violence in the two years before filing or during the suit, subject to an exception allowing protected access on findings that it would not endanger the child and would be in the child's best interest. Id. § 153.004(d), (d-1). Here, at least, the Code names a standard. The result is a ladder of standards that bears no relation to the weight of what is decided:

Decision under the Code	**Standard the text states**	**Section**
Removing the joint managing conservatorship presumption, or barring joint appointment, on abuse or violence	"a finding of a history," or "credible evidence is presented" (no standard of proof stated)	§§ 153.131(b), 153.004(b)
Denying a parent access on a history of family violence	Preponderance, with an exception	§ 153.004(d), (d-1)
Every other finding in a suit	Preponderance	§ 105.005

Decision under the Code	Standard the text states	Section
affecting the parent-child relationship, unless the title provides otherwise		
A grandparent overcoming the parental presumption to obtain access	Preponderance, after an affidavit gate	§§ 153.432(c), 153.433(a)
A nonparent overcoming the parental presumption on conservatorship or access	Clear and convincing evidence, with a written statement of specific facts	§ 153.002(b), (c)
Involuntary termination of the parent-child relationship	Clear and convincing evidence	§ 161.001(b)

Source: Tex. Fam. Code §§ 105.005, 153.002, 153.004, 153.131, 153.432, 153.433, 161.001 (text rendered Dec. 13, 2025).

The fifth row is new, and it is the most revealing. In 2025 the Legislature amended Section 153.002 to provide that "In a suit between a parent and a nonparent, it is a rebuttable presumption that: (1) a parent acts in the best interest of the parent's child; and (2) it is in the best interest of a child to be in the care, custody, and control of a parent." Id. § 153.002(b). A nonparent overcomes it only "by proving by clear and convincing evidence that denial of the relief requested by the nonparent would significantly impair the child's physical health or emotional development," and an order granting relief "shall state in the order" the specific facts supporting the finding and "the extent to which the nonparent has overcome the presumption." Id. § 153.002(c). The amendment tracks the Supreme Court of Texas's holding that a court must apply the presumption that the fit parent, and not the court, determines the child's best interest "in any proceeding in which a nonparent seeks conservatorship or access over the objection of a child's fit parent." In re C.J.C., 603 S.W.3d 804 (Tex. 2020), slip op. at 18.

The Legislature has thus decided, in plain words and recently, that a fit parent's relationship with a child is weighty enough that a stranger to the child must prove harm by clear and convincing evidence and write down the facts before disturbing it. The same relationship, threatened not by a nonparent but by the other parent's petition, is allocated under Section 105.005 by a preponderance, with no presumption in its favor beyond a joint conservatorship that does not include time, and with no required statement of facts. The child loses the same parent either way. A fit parent is protected from a nonparent by clear and convincing evidence and a written statement of facts, and from the other parent's petition by a coin weighted fifty-one to forty-nine. Even a grandparent, who proceeds by a preponderance, must first pass an affidavit gate and overcome a stated presumption, and an order granting access over a parent's objection must state the elements "with specificity." Id. §§ 153.432(c), 153.433(a), (b).

The strongest response is that the two situations differ: between parents, each holds the same right, so a presumption for one parent is a presumption against the other. That is correct, and it is why the Supreme Court of Texas has not extended C.J.C. to disputes between parents. In re V.L.K., 24 S.W.3d 338 (Tex. 2000), as described in C.J.C., slip op. at 2, held that the statutory

parental presumption does not carry into Chapter 156 modifications, and C.J.C. said its own holding "does not alter the burden of proof for modifications of court-ordered custody arrangements in which neither parent is named a managing conservator in the original order." Slip op. at 21. But the symmetry argument proves the opposite of what it is offered for. If both parents hold an equal fundamental right, the presumption that respects both is a presumption that each keeps the relationship, which is a presumption of shared time, rebuttable on proof. The Code instead presumes a schedule that gives one parent the minority of the child's nights, and requires no proof at all to impose it. The next section shows how.

What follows is a precise legislative target. The proof standard is not a stranger to this Code or to this Constitution. Santosky holds that due process requires clear and convincing evidence before the State severs a parent's rights, Section 153.002(c) already applies that standard to nonparents, and Article I, Section 37 names the right fundamental. If a harm is serious enough to interfere with a fit parent's time, the State that asserts it can prove it by clear and convincing evidence. The Code already contains the drafting the author recommends: a presumption, a clear and convincing standard, and a mandatory written statement of specific facts. It uses that drafting to protect parents from nonparents. Extending it to the departure from shared time between two fit parents requires no new concept, only consistency.

3.5 The Standard Possession Order: A Minimum and a Best Interest in One Presumption

The operative rule of Texas custody is not in Section 153.002. It is in Section 153.252, which reads in full: "In a suit, there is a rebuttable presumption that the standard possession order in Subchapter F: (1) provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator; and (2) is in the best interest of the child." The presumption applies to temporary orders as well, by Section 105.001(g), so it governs the months while a case is pending as well as the final decree.

Read the two clauses together. The first says the schedule is a reasonable minimum. The second says it is in the best interest of the child. The Code thus presumes, in one sentence, both that the schedule is a reasonable minimum and that it is in the child's best interest, which are different propositions, and it never says why a schedule offered as a floor should also be the best the child can have. Section 153.251(a) confirms that the guidelines are intended "to guide the courts in ordering the terms and conditions for possession of a child by a parent named as a possessory conservator or as the minimum possession for a joint managing conservator." A minimum is a floor. Presuming the floor to be the best interest of the child tends to turn the floor into the ceiling, and the Code supplies no instruction for building above it except agreement of the parties (§ 153.255) or a contested departure that the court explains only on request (§ 153.258).

What the minimum contains is fixed by the text. For parents living 100 miles or less apart, the possessory conservator has the child "on weekends throughout the year beginning at 6 p.m. on the first, third, and fifth Friday of each month and ending at 6 p.m. on the following Sunday,"

and “on Thursdays of each week during the regular school term beginning at 6 p.m. and ending at 8 p.m.” Tex. Fam. Code § 153.312(a). Spring vacation alternates by year; summer possession is thirty days, by default July 1 to July 31, less one weekend the managing conservator may reclaim. Id. § 153.312(b). Christmas is split at noon on December 28 and alternated; Thanksgiving alternates; the parent without possession on the child’s birthday gets two hours, from 6 p.m. to 8 p.m. Id. § 153.314(1) to (4). The Code is precise about every hour. It is silent on why these hours, rather than any others, are presumed to be best for every child of three or older in the State.

Since 2021 the Code has offered a longer version. A conservator may elect to begin weekend possession when school is dismissed and to end it when school resumes, and to keep the Thursday period overnight until school resumes on Friday. Id. § 153.317(a)(1), (2). For a possessory conservator living not more than 50 miles away, Section 153.3171 makes those elections automatic unless the conservator declines or the court finds them not in the child’s best interest, including because the conservator “did not frequently and continuously exercise the rights and duties of a parent” before the suit. Id. § 153.3171(b)(3)(B). The Legislature enacted Section 153.3171(a) twice in the same session, by two bills, and the compiled Code prints both versions of subsection (a), one of which includes the Monday-holiday election and one of which does not. The State has two texts of the subsection that sets how many nights a child spends with a parent, and the official compilation does not say which controls.

How much of a child’s year does the minimum provide? The Code does not say, and no Texas dataset reports the schedules children actually live under (the Office of Court Administration reports cases by type and disposition only). The answer can be counted from the statute. The table below applies the text of Sections 153.312 and 153.314 to one model school year (August 2026 to August 2027, a year in which the possessory parent has the first half of Christmas and the managing conservator has Thanksgiving and spring vacation), counting overnights. The count is the author’s arithmetic from the statutory text, with stated assumptions about the school calendar; it is an illustration of what the text provides, not a measure of any child’s order.

Schedule as written	**Overnights with the possessory parent in the model year**	**Share of 365 nights**
Standard possession order, parents 100 miles or less apart, no elections (§§ 153.312, 153.314)	about 83	about 23 percent
Same, with the expanded beginning and ending times of §§ 153.317 and 153.3171	about 139	about 38 percent
Equal time	182 or 183	50 percent

Source: computed from Tex. Fam. Code §§ 153.312, 153.314, 153.317, 153.3171 (text rendered Dec. 13, 2025). Assumptions: school term Aug. 17, 2026 to May 28, 2027; default summer period of July 1 to 31 less one reclaimed weekend; holidays allocated as stated. A second

computation from the same text, with slightly different assumed school-break dates and the Mother's Day weekend assigned to the managing conservator, gave 81 and 138 nights, so each figure carries a margin of two or three nights. The alternate year shifts the totals by a few nights.

The presumptive outcome of a Texas custody case is therefore a schedule under which one parent has the child roughly one night in four, or, at the expanded schedule, a little under two nights in five. The Code calls the parent with that schedule a joint managing conservator in many cases, and it states, as public policy, that possession should "optimize the development of a close and continuing relationship between each parent and child." Tex. Fam. Code § 153.251(b). A policy of optimizing each relationship, implemented by a presumption that one relationship receives a quarter of the nights, is not a policy. It is a slogan attached to a timetable.

The treatment of young children sharpens the contradiction. The standard possession order "is designed to apply to a child three years of age or older." Id. § 153.251(d). For a younger child the court "shall render an order appropriate under the circumstances," weighing thirteen factors, among them "the child's need to develop healthy attachments to both parents" and "the effect on the child that may result from separation from either party." Id. § 153.254(a)(2), (8). This is the one place the Code speaks the language of Chapter 2. But the same section directs that the court "shall render a prospective order to take effect on the child's third birthday, which presumptively will be the standard possession order." Id. § 153.254(d). The Code recognizes the child's need for attachment to both parents until the third birthday and then presumes, for the remaining fifteen years, a schedule that was never tested against that need. Attachment relationships do not expire at three; Chapter 2 showed that security is moderately stable and responsive to caregiving across childhood. The statute treats the third birthday as the day the science stops applying.

The strongest defense of the standard order is predictability. A fixed schedule reduces litigation over details, lets parties settle in its shadow, and gives a pro se parent a known default. Those are real benefits, and they are reasons to keep a fixed default. They are not reasons for the default to be a minority schedule. Predictability is equally available from an equal schedule, as the five States discussed in Section 3.9 show. Nor does the defense answer the drafting problem: a schedule offered as a minimum has been made a presumption of best interest. The Legislature can keep the predictability and change the number.

What follows is the central finding of this chapter. Texas does not presume shared parenting. It presumes a primary parent and a possessory parent on a schedule the Code itself calls a minimum, and it applies that presumption to temporary orders from the first hearing. Every later stage of a case, from the jury to the findings to the modification standard, operates against that starting point.

3.6 The Jury That Cannot Be Asked About Time

Texas gives the parties to a custody case a jury, and the text is worth reading closely. "Except as

provided by Subsection (b), a party may demand a jury trial." Tex. Fam. Code § 105.002(a). In a jury trial, "the court may not contravene a jury verdict" on the appointment of a sole managing conservator, joint managing conservators, or a possessory conservator; on "which joint managing conservator has the exclusive right to designate the primary residence of the child"; and on whether and where to impose a geographic restriction. Id. § 105.002(c)(1). Then subsection (c)(2): "the court may not submit to the jury questions on the issues of: (A) support under Chapter 154 or Chapter 159; (B) a specific term or condition of possession of or access to the child; or (C) any right or duty of a conservator," other than the residence and geographic determinations.

The jury may therefore decide who is primary. It may not decide how many nights the child spends with each parent. That question goes to the judge, who decides it against the presumption of Section 153.252. The Constitution declares that "The right of trial by jury shall remain inviolate." Tex. Const. art. I, § 15. The Family Code keeps the jury inviolate on the label and removes it from the substance. For a child, the label of joint managing conservator matters less than whether a parent is present on a school night; the Code lets twelve citizens decide the first and forbids them to be asked the second.

The right is also almost never used. In fiscal year 2024, Texas district and statutory county courts disposed of 310,101 family cases; 103 ended in a final judgment on a jury verdict, and 78,683 ended in a judgment after a non-jury trial (Office of Court Administration, 2025, pp. 3-4). In fiscal year 2025 the district courts disposed of 282,099 family cases, 109 of them by jury verdict, about 0.04 percent; across district and statutory county courts, 21 of 56,182 divorces with children and 20 of 18,895 other parent-child suits were decided by a jury. These are court-reported administrative counts (Grade C). They do not record demands later waived, and they do not show why the right goes unused; cost, delay, counsel's advice, and the narrow range of questions a jury may answer are each plausible, and none was measured in any source read.

What follows is a modest but exact point. A jury right that cannot reach time with the child is a jury right over vocabulary. If the Legislature means the jury to protect the parent-child relationship, Section 105.002(c)(2)(B) is the subsection to amend, so that a jury may decide whether the presumptive schedule is departed from and on what showing. The author's recommendation, that the jury right on conservatorship be preserved and used, depends on giving the jury something worth deciding.

3.7 Reasons on Request

A parent who loses time with a child is entitled, in most cases, to no written explanation unless the parent knows to ask, and asks in time. In a case tried without a jury, "any party may request the court to state in writing its findings of fact and conclusions of law," and the request "shall be filed within twenty days after judgment is signed." Tex. R. Civ. P. 296. If the court does not respond, the party must file a notice of past-due findings to preserve the point. Tex. R. Civ. P. 297. The Family Code adds its own version for possession: "In all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard

possession order, including a possession order for a child under three years of age, on request by a party, the court shall state in writing the specific reasons for the variance from the standard order." Tex. Fam. Code § 153.258(a). The expanded schedule of Section 153.3171 carries the same condition: "On the request of a party, the court shall make findings of fact and conclusions of law regarding the order under this section." Id. § 153.3171(c).

Look at what Section 153.258 covers. It requires reasons for a variance from the standard order. A parent who is given the standard order, the presumptive minority schedule, is owed no statutory statement of reasons at all, request or not, because the presumption is its own reason. The Code demands an explanation for any departure from the minimum and none for imposing it.

The Code knows how to require findings without a request when it wishes to. A court "may limit the rights and duties of a parent appointed as a conservator if the court makes a written finding that the limitation is in the best interest of the child." Id. § 153.072. A support order that departs from the guidelines carries required findings. Id. § 154.130(a)(3). An order giving a grandparent access over a parent's objection must state the statutory elements with specificity, id. § 153.433(b), and an order giving a nonparent relief must state "the specific facts" that support the finding, id. § 153.002(c). Temporary orders under Section 105.001, which decide where a child lives for the life of the case, carry no findings requirement in the text as read, and they "are not subject to interlocutory appeal." Id. § 105.001(e). The Legislature requires written reasons when money departs from a guideline and when a grandparent defeats a parent. It does not require them when a parent's time with a child is set at a quarter of the year.

What follows is the second legislative target of the chapter. A requirement that, in any ruling that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees against a parent, the court state in writing the specific facts relied on, made without request in every such ruling in a contested case and in every ruling in which a party appears without counsel, would use drafting the Code already contains in Sections 153.002(c), 153.072, and 153.433(b), and the authority to require findings is supported by Gov't Code § 22.004. In an agreed order with all parties represented, the parties' agreement and a best-interest statement would suffice, and failure to make findings would be remedied by remand for findings. Chapter 4 examines what the absence of findings does to review.

3.8 Modification: A Standard With No Presumption

Once an order is entered, the relationship it sets is protected chiefly by inertia. A court may modify conservatorship or possession "if modification would be in the best interest of the child" and the circumstances of the child, a conservator, or another affected party "have materially and substantially changed" since the order or the settlement agreement on which it rests, or a child of twelve or older has stated a preference in chambers, or the primary conservator has voluntarily relinquished primary care for six months. Tex. Fam. Code § 156.101(a). A suit to change the primary-residence designation filed within a year requires an affidavit alleging, among other grounds, that "the child's present environment may endanger the child's physical

health or significantly impair the child's emotional development," and the court "shall deny the relief sought and refuse to schedule a hearing" if the affidavit is inadequate. Id. § 156.102(b)(1), (c).

The structure has a logic: stability for the child, protection against relitigation. But it locks in whatever the first order did, including a minority schedule imposed by presumption at a temporary hearing without findings. And the statutory parental presumption does not follow the parent into a modification suit. In re V.L.K., 24 S.W.3d 338 (Tex. 2000), as described in In re C.J.C., slip op. at 2. A parent who lost time under a preponderance at the start must later show a material and substantial change before the question can be reopened at all. The Code is careful about stability once the order exists, and careless about the quality of the order it stabilizes.

What follows is that reform of the starting rule matters more than reform of the modification rule. A modification standard protects whatever the initial decision produced; if the initial presumption is changed, the modification standard will protect the better outcome with the same force.

3.9 What Other States Have Done

Five States now begin a contested custody case from equal parental time, and every one of them pairs the presumption with a family-violence rule written into the same statute.

State	Citation	Year	Presumption	Rebuttal standard and violence rule
Kentucky	KRS 403.270(2), 403.315 (temporary orders: 403.280)	2018 (temporary orders 2017; violence amendments 2026)	"joint custody and equally shared parenting time is in the best interests of the child"	Preponderance; inapplicable to a party subject to a domestic violence order; since 2026, a reverse presumption where a party has committed two or more acts of domestic violence and abuse
Arkansas	Ark. Code Ann. § 9-13-101(a)(1)(A)(iv), (a)(5) (Act 604 of 2021)	2021	Joint custody, defined as "the approximate and reasonable equal division of time with the child by both parents"	Clear and convincing evidence; also displaced by agreement or by another presumption, including the

State	Citation	Year	Presumption	Rebuttal standard and violence rule
				presumption against custody to a parent shown to have engaged in a pattern of domestic abuse
West Virginia	W. Va. Code § 48-9-102a (S.B. 463 of 2022)	2022	"equal (50-50) custodial allocation is in the best interest of the child," at temporary and final hearings	Preponderance; limits for abuse, neglect, domestic violence, and other listed circumstances
Florida	Fla. Stat. § 61.13(2)(c) (ch. 2023-301)	2023	"equal time-sharing of a minor child is in the best interests of the minor child"	Preponderance; specific written findings required unless the parties agree
Missouri	RSMo § 452.375 (S.B. 35 of 2023)	2023	"equal or approximately equal parenting time to each parent is in the best interests of the child"	Preponderance; not applied on full agreement or a pattern of domestic violence

Source: the statutes of Kentucky, West Virginia, Florida, Missouri, and Arkansas (Act 604 of 2021).

Three lessons follow from the table. First, an equal-time starting point is an established legislative design in the States, not an untested idea. Kentucky's House passed its 2018 bill 83 to 1 and its Senate 38 to 0. Second, every enacted version carries a violence exception, and Kentucky tightened its exception in 2026 by adding a reverse presumption against equal time where a party has committed two or more acts of domestic violence and abuse, after a 2026 bill to repeal the presumption was referred to committee and not enacted. A Texas bill that omitted the violence rule would be an outlier among its own models. Third, the variable that matters most is the burden of rebuttal, not the label. Four of the five States used a preponderance standard, which lets the presumption decide close cases while leaving the court free to depart on ordinary proof; a presumption rebuttable by a preponderance has weaker effect. Texas should not copy the weaker standard. Arkansas's clear and convincing standard makes departure harder and therefore makes equal time the result in more contested cases, and it is

the standard that fits a right the Texas Constitution now calls fundamental. Florida adds the feature Texas most conspicuously lacks: written findings whenever the court departs, without a request.

The evidence on what these statutes have done is thin, and it must be stated as thin. No peer-reviewed or government evaluation of the Kentucky law was found. The figures most often repeated, a decline in family court filings from 22,512 to 19,991 over three years and declines of 248 and 445 domestic violence filings, come from an advocacy blog citing a newspaper account of a court report that was never located; they are before-and-after counts with no comparison group and cannot carry a causal claim. A comparison of Kentucky's divorce rate with neighboring States found the rate falling before 2018 and continuing at the same rate afterward (Stone, 2025, Grade C, not peer-reviewed), so the claim that the law reduced divorce is not supported. No evaluation of the Arkansas, West Virginia, Florida, or Missouri statutes was found. Arizona, which requires a plan that "maximizes" each parent's time without presuming equality, was evaluated only through a survey of 209 family-law professionals, who reported that fathers' time rose, that conflict was unchanged, and that allegations of abuse rose slightly (Fabricius et al., 2018; Grade D). That is evidence about how practitioners read a statute, not about children.

The stronger causal evidence concerns the earlier generation of American joint custody laws, adopted at different times from the 1970s to the 1990s. Using that staggered timing, Halla (2013) found that joint custody laws raised marriage rates, by about 3.68 marriages per 1,000 adults fifteen years after reform, with no convincing effect on divorce (Grade B). Halla's later review reports fewer husband-on-wife domestic violence incidents and lower male suicide after these laws, and also reports two unpublished working papers finding that children who grew up in joint custody law States completed less schooling (Halla, 2015; the child-outcome papers). Those were mostly joint legal custody laws, not equal-time laws, and the child-outcome papers are unpublished; but they belong in the record because the same literature that supports the policy contains its most serious caution. Chapter 2 set out the Swedish random-judge study, which supports moving the margin of contested cases toward shared custody while leaving a court free to deny it where abuse is shown; its authors limit their own conclusion to "a modest expansion in the use of joint custody among disputed, marginal cases" (Canessa et al., 2026, working paper).

The cost objection has also been tested in Texas, by the State's own fiscal office. Five Legislative Budget Board fiscal notes on equal-parenting bills across five sessions found no significant fiscal implication for the State. What follows is that Texas is not choosing between its current design and an experiment. It is choosing among designs other States have enacted and Texas's own budget office has priced, and the Texas bills that proposed them, most recently in the 88th and 89th Legislatures, did not become law. Section 153.135 still reads that equal possession is not required.

3.10 Divorce Without a Reason

Every custody case discussed so far begins somewhere, and for most children of married parents it begins with a petition for divorce. The Family Code's first ground for divorce reads in full: "On the petition of either party to a marriage, the court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation." Tex. Fam. Code § 6.001. A second fault-free ground needs no discord at all: "The court may grant a divorce in favor of either spouse if the spouses have lived apart without cohabitation for at least three years." Id. § 6.006.

The fault grounds remain on the books. Cruelty: "The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable." Id. § 6.002. Adultery, id. § 6.003; conviction of a felony with a year's imprisonment, id. § 6.004; abandonment for a year, id. § 6.005; and confinement in a mental hospital for three years, id. § 6.007. But the Code has dismantled the defenses that once gave a respondent something to say: "The defenses to a suit for divorce of recrimination and adultery are abolished," and condonation "is a defense to a suit for divorce only if the court finds that there is a reasonable expectation of reconciliation." Id. § 6.008. Since Section 6.001 requires a finding that there is no reasonable expectation of reconciliation, the one surviving defense is available only in the suits where it cannot matter. The property follows the same pattern: the court divides the estate "in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage." Id. § 7.001. The Code names no factor in that section, fault included.

Set this beside the statute that created the Commission to which this report is addressed. "The legislature finds that: (1) it is in the best interests of this state to promote lasting marriage and the practice of raising children in stable, two-parent households; (2) Texas must promote evidence-based pathways to support strong and healthy family connections by reducing barriers that prevent Texans from marrying and raising children; (3) certain state laws, rules, and policies may discourage the positive and desirable ends of marriage and family formation." Tex. H.B. 3284, 89th Leg., R.S., § 2 (2025). The Commission must recommend policies "to: (i) support and increase the formation of strong, lasting marriages and healthy family connections; and (ii) reduce the incidence of divorce and family dissolution." Id. § 7(3)(B). These findings belong to an uncodified session law that expires Dec. 31, 2026, and they state policy, not a rule of decision in any case. They are nonetheless the Legislature's own words. The State has found that lasting marriage is in its best interest, and its divorce statute permits either party to end a marriage for "conflict of personalities," a condition that the statute leaves to one party's word.

The Code already treats violence as a reason for speed. The sixty-day waiting period does not apply where the respondent has been convicted of, or received deferred adjudication for, a family-violence offense against the petitioner or a household member, or where the petitioner has an active protective order or magistrate's emergency order based on family violence during the marriage. Tex. Fam. Code § 6.702(c). That is the correct instinct. It shows that the Legislature

can write a divorce statute that distinguishes harm from discord. Section 6.001 declines to.

What follows is that the Code's divorce chapter and the Legislature's 2025 findings point in opposite directions, and only one of them is codified. The question is what the evidence says about closing the gap, which the next section takes up in full, beginning with the evidence against.

3.11 The No-Fault Question in Full

The case for reform rests on a study in which the law, not the families, varies. Gruber (2004) used four decades of census data and the different dates on which States adopted unilateral divorce to compare adults who grew up under unilateral regimes with those who did not. He reports that adults exposed as children to unilateral divorce laws were less educated, had lower family incomes, married earlier but separated more often, and had higher odds of adult suicide, with the effects building over about eight years of exposure (Gruber, 2004). The design is a natural experiment on law timing, and the report grades it B rather than A: the Project read the study only in part, and the same research group's later work on the same reforms (Stevenson and Wolfers, 2006) reaches different conclusions about adults. Because the variation comes from the law, the usual objection to family-structure research, that troubled families select into divorce, does not explain the result. That is why this study, more than any correlational comparison of children of divorce with children of intact families, bears on a legislative choice.

The strongest evidence against the author's recommendation comes from the same kind of design, and it must be met first, not in a footnote. Stevenson and Wolfers (2006), used the timing of unilateral divorce reforms across States and found that female suicide fell by 8 to 10 percent on average over the following twenty years and by 16 to 19 percent in the long run, with no effect on male suicide. Using two cross-sectional surveys of intact marriages (1976 and 1985), they found that spousal violence fell after reform in both directions; at baseline, the rate of husband-to-wife violence was 11.7 percent and of wife-to-husband violence 11.9 percent. They report a decline of about 10 percent in women murdered by intimate partners, and they describe that result as weak because of its timing. The suicide result is the strongest (Grade B); the violence and homicide results rest on weaker data (Grade C). The study measures adults; it reports no child outcome.

Stevenson and Wolfers name two channels by which unilateral divorce could produce these effects. The first is exit: a spouse in a harmful marriage can leave. The second is bargaining: because either spouse can leave, the spouse who would otherwise be trapped gains power inside the marriage, and conduct changes within marriages that never end. This distinction governs the honest answer. It is tempting to reply that a repeal which keeps cruelty as a ground keeps the protection the study describes. That reply is incomplete. A repeal that keeps fault grounds for cruelty and violence keeps part of the exit channel, the part available to a spouse who can prove harm. It keeps none of the bargaining channel, because bargaining power under unilateral divorce comes precisely from the ability to leave without proving anything.

The author's lead recommendation, stated as his own, is therefore made with its cost in view:

- Repeal Sections 6.001 (insupportability) and 6.006 (living apart), the two grounds that require no showing of harm. Both must go, or a no-fault path remains.
- Keep Section 6.002 (cruelty) and the other fault grounds. Spouses who both want to end the marriage proceed on those grounds by agreed judgment; the bill creates no ground that requires no reason.
- Add an express fault ground for family violence and child abuse, tied to a mandatory referral of the allegation to the prosecuting attorney, so that abuse is tested where proof beyond a reasonable doubt applies and a victim is not required to remain married while the criminal case proceeds.
- Keep protective orders and emergency removal as they are, and keep the family-violence exception to the waiting period in Section 6.702(c).
- Apply the change only to suits filed on or after the effective date, which respects the bar on retroactive laws in Tex. Const. art. I, § 16.

The cost is stated plainly. The bargaining channel Stevenson and Wolfers identify would be lost for marriages that are not violent enough to prove. Some spouses who would leave under current law would stay, and some who would have gained leverage inside the marriage would not. Fault trials are adversarial, they air allegations in open court, and they cost money and time; the author accepts that cost and weighs it against the present system, in which a marriage ends on one party's word and the children's schedule is then set by presumption, by preponderance, and without reasons. The express violence ground and the criminal referral answer the exit concern for the cases the Stevenson and Wolfers data most directly describe; they do not answer the bargaining concern, and this report does not claim they do. The referral itself must respect the separation of powers: the Court of Criminal Appeals has held that the Legislature may not remove or abridge a prosecutor's exclusive function without express constitutional authority, Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987), so the referral delivers the allegation to the prosecutor and leaves the charging decision where the Constitution puts it.

Why accept that cost? Because the two studies measure different people. Stevenson and Wolfers measure the adults in the marriage. Gruber measures the children who grew up under the law. A legislature charged by its own statute with the best interest of the child, and by H.B. 3284 with reducing "the incidence of divorce and family dissolution," may reasonably weigh the children's long-run outcomes heavily, provided it preserves and strengthens the exit for spouses and children facing violence. That is a judgment, not a finding, and it is offered as one. Neither study tests repeal: both measure the adoption of unilateral divorce in earlier decades. No source read predicts what repeal would do to divorce or marriage rates in Texas, and this report predicts nothing about rates. It asks the Legislature to require a measured review of the effects after four years.

Fallback only (if repeal fails): the author's fallback is designed to make no-fault obsolete by removing the advantages the no-fault filer now holds. Under the fallback only, a no-fault suit carries no temporary orders, because the statute itself fixes the interim: the filer pays household living expenses until the case ends and the non-filing spouse keeps possession of the

community property. The non-filing respondent holds decision-making for the children and selects the schedule closest to equal possession, with possession removed only on a conviction by jury verdict of a felony that endangers the child, never on a plea; protective orders and emergency removal remain available. Absent agreement, the filer forfeits the community estate. The filer pays for requested and ordered services, and receives no state or county money for the case, including money passed through a nonprofit, for counsel, advocacy, or services, while the fee and cost waiver required by Boddie v. Connecticut, 401 U.S. 371 (1971), remains in place. A party who alleges abuse proceeds on the fault ground, where the allegation can be tested. The constitutionality of the forfeiture rule has not been analyzed in any source read, and it is offered as a policy design for the Legislature's counsel to examine, not as settled law.

What follows is that the divorce question is not separate from the custody question. Under current law the decision that ends a marriage requires no reason, and the decision that follows it, how much of a child's life each parent keeps, is made by presumption. The fault requirement and the custody presumption are two ends of the same rope: a system that asks no one to prove anything at the start has no occasion to ask for proof at the end.

3.12 The Weight the Code Cannot Bear

Gather the contradictions in one place. Each is a conflict between two provisions of Texas law, read in their own words.

The Constitution declares a parent's "fundamental right to exercise care, custody, and control" of the child (art. I, § 37), and the Family Code allocates that right between parents by "a preponderance of the evidence" (§ 105.005), the standard a civil court uses for a dispute over a fence line.

The Code declares a policy of "frequent and continuing contact" (§ 153.001(a)(1)) and of possession that will "optimize the development of a close and continuing relationship between each parent and child" (§ 153.251(b)), and then presumes as the child's best interest a schedule it calls a "reasonable minimum" (§ 153.252), under which, by the count in Section 3.5, the possessory parent has the child roughly one night in four.

The Code presumes joint managing conservatorship (§ 153.131(b)) and in the next breath says that joint conservatorship "does not require" equal or nearly equal time (§ 153.135) and requires the court to designate one joint conservator as primary (§ 153.134(b)(1)).

The Code makes the best interest of the child "always" the primary consideration (§ 153.002(a)), uses the phrase in 134 sections, defines it in none, places its most detailed factor list in the chapter written for the State as custodian (§ 263.307), and allows a signed settlement to override it except in two listed circumstances (§ 153.0071(e), (e-1)).

The Code protects a fit parent from a nonparent by a presumption, clear and convincing evidence, and a written statement of specific facts (§ 153.002(b), (c)), and protects the same parent from losing the same child to the other parent's petition by none of the three.

The Code gives the parties a jury whose verdict the court "may not contravene" on

conservatorship (§ 105.002(c)(1)) and forbids the jury to be asked about "a specific term or condition of possession of or access to the child" (§ 105.002(c)(2)(B)), the question that decides how much of the child's life each parent keeps.

The Code requires written reasons when a court limits a conservator's rights (§ 153.072), departs from support guidelines (§ 154.130(a)(3)), or grants a nonparent relief (§ 153.002(c)), and requires reasons for a departure from the standard possession schedule only "on request by a party" (§ 153.258(a)), and for imposing the schedule never.

The Code recognizes, for a child under three, "the child's need to develop healthy attachments to both parents" (§ 153.254(a)(8)), and presumes the minority schedule from the third birthday on (§ 153.254(d)).

The Code contains two versions of the subsection that sets the expanded schedule (§ 153.3171(a)), and the official compilation prints both.

The Legislature has found that "it is in the best interests of this state to promote lasting marriage" (H.B. 3284, § 2(1)), and the Code permits either spouse to end a marriage "without regard to fault" for "discord or conflict of personalities" (§ 6.001), and abolishes the defenses that once allowed the other spouse to answer (§ 6.008).

None of these contradictions depends on a disputed fact, a contested study, or a characterization of anyone's motive. Each is visible to a reader with the Code open on the desk. Together they show that the Family Code does not implement the policy it declares or the right the Constitution now names. It declares shared parenting and presumes a primary parent. It declares a fundamental right and allocates it by the weakest standard of proof. It declares the child's best interest supreme and never says what it is. A structure whose stated purposes and operative rules point in opposite directions cannot stand under its own weight. It stands only because the operative rules are applied and the stated purposes are not.

The remedy this chapter supports is narrower than a slogan and more demanding. It is a set of amendments that make the operative sections match the declared policy: a presumption, stated as procedural, that equal or substantially equal possession by each fit parent is in the child's best interest, applying to temporary and final orders, with the Section 153.004 family-violence findings unchanged and displacing it, as every State that has adopted the design has done; a standard of proof for any departure that matches the constitutional weight of the right, the clear and convincing standard and the written statement of specific facts the Code already applies to nonparents, which Texas should not water down to the preponderance four of the five States chose; a stepped schedule for infants that moves toward equal time by the child's second year and is the same whichever parent has been the primary caregiver; written findings of the specific facts relied on in every ruling that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees against a parent; a jury that may decide the departure from shared time; and, at the threshold, a divorce statute that repeals the two grounds requiring no reason, keeps cruelty and the other fault grounds, and leaves spouses who both want out to proceed on those grounds by agreed judgment. The temporary-order abolition and the other no-fault advantages are a fallback only, if repeal fails. Each of these uses

language already in the Texas Code or in the statutes of other States. The Legislature does not need new concepts. It needs to read its own Code.

The presumption this report proposes reads: "It is presumed that equal or substantially equal possession by each fit parent is in the child's best interest. The presumption allocates the burden of proof and does not displace the best-interest standard, which remains the primary consideration. It is rebuttable only by clear and convincing evidence, stated in written findings of the specific facts relied on. A fit parent is a parent who has not been found, on those findings, to endanger the child's physical or emotional welfare and who is willing and able to exercise possession." For a child under twelve months the court would order a stepped schedule of increasing frequency and duration of possession by each fit parent, moving toward equal time by the child's second year, adjusted only on findings specific to the child, the same whichever parent has been the primary caregiver.

3.13 What follows

This chapter read the Code as written and found that its declared policies and its operative rules contradict one another. But a statute is only half of a legal system; the other half is the machinery that applies it. Chapter 4 turns to the Code as operated: the temporary orders that set a child’s schedule for the life of a case and can be reviewed only by mandamus, the associate judges and Title IV-D courts that hear much of the docket, the short window for a de novo hearing, the record that may not be made, and the time standards that carry no consequence. The contradictions of the text become, in operation, the experience of the family.
Chapter 4. The Code as Operated

Chapter 3 read the Family Code as a text. It found a Code that declares the best interest of the child “the primary consideration of the court” (Tex. Fam. Code § 153.002(a)), states a public policy of “frequent and continuing contact with parents who have shown the ability to act in the best interest of the child” (§ 153.001(a)(1)), and presumes that the appointment of both parents as joint managing conservators serves the child (§ 153.131(b)), and it found that the same Code leaves the content of the child’s interest almost entirely to the judge who applies it. A standard that open is only as good as the procedure that applies it. This chapter therefore turns from what the Code says to how its allocations are actually made: who decides, how fast, on what record, with what findings, under what review, and at whose expense.

The answer is assembled from the Family Code (the Legislature’s text rendered December 13, 2025), the court rules, the decisions of the Supreme Court of Texas, and the State’s own court and budget data. Where the State does not collect a number the argument would need, the chapter says so; the absence is part of the finding.

The finding can be stated at the outset. In Texas, the fundamental right that Article I, Section 37 now names can be allocated, for the months or years a case is pending, by an order entered after a single hearing, by a judicial officer whom no voter chose, without a record unless someone thinks to provide one, without findings unless someone asks for them in time, without any right of appeal, on a three-working-day clock for reaching the elected judge, with attorney’s

fees that may be assessed against a parent and paid directly to the other side's lawyer, and with contempt as the enforcement tool. Each feature is lawful and has a stated rationale. Together they describe a forum designed for efficiency, and the evidence reviewed in Chapter 2 says that a child's relationships are not an efficiency problem.

4.1 The measure of a procedure

The Supreme Court of the United States measures the process due before the government deprives a person of a protected interest by weighing three things: the private interest affected, the risk of an erroneous deprivation through the procedures used and the probable value of additional safeguards, and the government's interest, including the fiscal and administrative burden that added procedure would bring. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Due process is "flexible" (id. at 334), and its core is the opportunity to be heard "at a meaningful time and in a meaningful manner" (id. at 333). Chapter 1 adopted that test as one of this report's three lenses, and this chapter applies it to the machinery of the Family Code.

The first factor is not in doubt. The parental interest is "perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion). Texas has now written that interest into its Bill of Rights, affirming "that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child." Tex. Const. art. I, § 37 (added Nov. 4, 2025). The Supreme Court of Texas has declined, so far, to say what Section 37 requires, leaving "a more robust discussion of this new provision" for "another day, following appropriate percolation in the lower courts." In re K.N., No. 24-0881, slip op. at 17-18 (Tex. June 5, 2026). The federal decisions that do set a standard of proof, Santosky v. Kramer, 455 U.S. 745, 768 (1982), most prominently, concern termination, and no decision read for this report applies a fit-parent presumption in a dispute between two fit parents. The argument of this chapter is therefore a policy argument addressed to the Legislature, not a claim that any present procedure has been held unconstitutional. The Legislature need not wait for a court to declare a procedure inadequate before deciding that a fundamental right deserves better.

The second and third factors are examined here by following the life of a case: temporary orders, sometimes before an associate judge, then months under that order, then a final order, usually by agreement, almost never by a jury. At each stage the question is what protects parent and child against error, and what a better safeguard would cost.

4.2 Temporary orders: the decision before the decision

The decision that most often determines where a child lives during a case is not the final decree. It is the temporary order. Section 105.001(a) authorizes the court, in any suit affecting the parent-child relationship, to make a temporary order "for the safety and welfare of the child," including an order "for the temporary conservatorship of the child," "for the temporary support of the child," restraining a party from disturbing the peace of the child or another party, prohibiting removal of the child beyond a geographic area, and "for payment of reasonable and

necessary attorney's fees, court costs, and expenses." Tex. Fam. Code § 105.001(a)(1)-(5). Section 6.502 adds divorce orders on spousal support, occupancy of the residence, and fees. Id. § 6.502(a).

The statute supplies three protections. An order on conservatorship, support, or fees may not be rendered "except after notice and a hearing," unless it is a governmental emergency order under Chapter 262. Id. § 105.001(b), (h). An order "excluding a parent from possession of or access to a child" may be rendered only "on a verified pleading or an affidavit." Id. § 105.001(c)(3). And the rebuttable presumptions in favor of the child support guidelines and the standard possession order "apply to temporary orders." Id. § 105.001(g). The Legislature has also attended to speed: since 2023, a court that refers a case to mediation on its own motion may not postpone the initial temporary-orders hearing beyond thirty days after the date set. Id. § 105.001(a-1).

What the section does not contain is as important as what it does. It states no standard of proof beyond the general rule that findings in a suit affecting the parent-child relationship rest on a preponderance of the evidence (id. § 105.005). It requires no findings of fact. It requires no statement of reasons. A temporary restraining order or injunction under the section "need not" define the injury, state why it is irreparable, or state why it was granted without notice. Id. § 105.001(b)(1)-(2). The order that decides whether a parent sees an infant on alternate weekends or every other day can issue after a single hearing, on affidavits and argument, and say nothing about why.

The Code knows how to demand more when it wishes to. In a modification suit, a temporary order that would change which parent designates the child's primary residence may issue only if it is in the child's best interest and the child's present circumstances "would significantly impair the child's physical health or emotional development," or the designated parent has voluntarily relinquished primary care for more than six months, or a child twelve or older has stated a preference in chambers. Id. § 156.006(b). The movant must attach an affidavit stating supporting facts, and if the affidavit is inadequate the court "shall deny the relief sought and decline to schedule a hearing." Id. § 156.006(b-1). That is a sworn showing, an elevated threshold, and a gate that closes before the hearing opens. The Legislature built it to protect an existing final order. It built nothing comparable to protect the child's existing relationship with each parent at the start of a case, when no order yet exists and the child's whole life with both parents is the status quo.

The contrast sharpens elsewhere. In 2025 the Legislature amended Section 153.002 so that, in a suit between a parent and a nonparent, the nonparent must overcome the parental presumption "by clear and convincing evidence," and a court that grants relief to the nonparent "shall state in the order" the specific facts supporting its finding of significant impairment and "the extent to which the nonparent has overcome the presumption." Id. § 153.002(b), (c). The Code thus demands written specific findings when a stranger to the parent-child relationship takes time from a parent, and demands none when the State, through a temporary order, takes the same time from one fit parent and gives it to the other. Each parent holds the same constitutional right. The Code protects that right against a nonparent with an elevated standard

and a written finding; against a temporary order it offers a hearing.

What follows is that the order with the greatest practical effect on the child during litigation is the order the Code surrounds with the fewest safeguards. The next sections show that it is also the hardest to correct and the most likely to frame the final decree, and that it may be entered by a judicial officer the parties did not choose.

4.3 No appeal: mandamus as the only door

Section 105.001(e) provides that "temporary orders rendered under this section are not subject to interlocutory appeal." The divorce chapter says the same of every temporary order under Subchapter F except an order appointing a receiver. Id. § 6.507. And Section 109.001(c) says it again of temporary orders entered while a final judgment is on appeal. Three sections, written at different times, close the same door. In 2025 the Legislature amended Sections 105.001 and 109.001 in H.B. 2524 (89th Leg., R.S., ch. 593, eff. Sept. 1, 2025), and both, as amended, still forbid the appeal.

The practical consequence is that a parent who believes a temporary order is wrong has one route: a petition for writ of mandamus. Mandamus issues only for a clear abuse of discretion for which the relator has no adequate remedy by appeal. In re C.J.C., 603 S.W.3d 804 (Tex. 2020), slip op. at 8 (citing Walker v. Packer, 827 S.W.2d 833, 839-40 (Tex. 1992), and Dancy v. Daggett, 815 S.W.2d 548, 549 (Tex. 1991) (per curiam)). The remedy is real. The Supreme Court of Texas has granted it where temporary orders gave possession of a child to a nonparent over a fit parent's objection, reasoning that such a divestiture is "irremediable." In re Derzapf, 219 S.W.3d 327, 335 (Tex. 2007) (per curiam); see In re Mays-Hooper, 189 S.W.3d 777, 777-78 (Tex. 2006) (per curiam); C.J.C., slip op. at 8, 23. An intermediate court has granted it against a temporary fee award made without evidence. In re David O'Connor, No. 03-21-00159-CV (Tex. App.-Austin 2021, orig. proceeding) (mem. op.). The accurate statement of Texas law is not that temporary orders are unreviewable. It is that they are reviewable only by an extraordinary writ, on the most deferential standard the appellate courts apply, at the relator's expense, and at the court's discretion.

The writ is extraordinary in its demands as well as its name. The relator must file with the petition a certified or sworn copy of every material document and "a properly authenticated transcript of any relevant testimony," or a statement that no testimony was taken. Tex. R. App. P. 52.7(a). If the court "determines from the petition and any response and reply that the relator is not entitled to the relief sought, the court must deny the petition," and it need order a response only if it is of the tentative opinion that relief may be warranted. Tex. R. App. P. 52.8(a), (b). A parent who had no reporter at the hearing (Section 4.8 shows how that happens) arrives at the court of appeals without the transcript the rule requires. A parent who received no findings (Section 4.7) arrives without any statement of the reasons the order rests on. The writ assumes a record and a rationale that the trial procedure does not guarantee.

The nonparent cases name the problem. Mandamus lies there because interim possession cannot be restored by a later appeal. The Court has not extended those holdings to disputes

between parents, and this report does not claim it has; but a year of alternate weekends imposed on a fit parent is no more restorable than a year of possession given to a grandparent. The time lost does not depend on who receives it.

The Legislature has already written two models that would answer this. The first is in Section 109.001 itself: a party may seek review of a temporary order pending appeal "by: (1) petition for writ of mandamus; or (2) proper assignment in the party's brief." Tex. Fam. Code § 109.001(b-5). The Legislature has thus accepted review of a child's temporary order by ordinary briefing. The second is in the appellate rules, which treat appeals in parental termination and governmental child protection cases as accelerated appeals with their own record and briefing schedule, Tex. R. App. P. 28.4(a), and set a disposition standard of 180 days for those appeals in the courts of appeals, Tex. R. Jud. Admin. 6.2(a). Texas already knows how to move a family appeal quickly when it decides the stakes justify it.

The objection is cost: interlocutory appeals would add to appellate dockets. The answer begins with a concession. No source read for this report measures how many temporary orders Texas courts enter, how many mandamus petitions they produce, or what load an accelerated appeal would add, and this report offers no estimate. But Mathews does not require that safeguards be free; it asks whether their value justifies their cost, and Section 4.4 shows that the risk of error in a temporary order extends into the final decree. An accelerated appeal with no automatic stay would cost appellate time. It would also give every trial court a reason to make a record and state reasons, a benefit even in the cases never appealed.

The author's recommendation, consistent with the position stated in Chapter 1, has two parts. The first is a fallback only, to be used if repeal of no-fault divorce fails: abolish temporary orders on conservatorship and possession in no-fault divorce suits, with equal possession for fit parents fixed by statute during the case and emergency safety orders still available on a corroborated showing of imminent danger. The second is general: in every other suit make an order that changes conservatorship, restricts possession, or awards fees carry written findings and an accelerated appeal, using Section 109.001(b-5) as the drafting model.

4.4 How the interim becomes the final

The temporary order matters beyond its own term because the final order is built on top of it. This section states that relationship as structure and states plainly what the record does not contain.

Start with content. The presumption in favor of the standard possession order applies to temporary orders. Tex. Fam. Code § 105.001(g). The standard possession order is a schedule of defined periods of possession for the parent who does not have the child's primary residence; Chapter 3 examined its terms. A temporary order entered under that presumption therefore creates, at the outset of the case, a primary parent and a secondary parent, and it does so before any evaluation, before discovery, and before either parent has had a trial.

Then consider time. Texas Rule of Judicial Administration 6.1 provides that contested family cases "should, so far as reasonably possible," be disposed of within six months of the

appearance date or of the end of the statutory waiting period. Tex. R. Jud. Admin. 6.1(b)(1). In the edition of the Texas Conservative Coalition Research Institute staff paper “Texas Family Courts”, an appendix of Office of Court Administration data for fiscal year 2025 shows that 73.3 percent of family cases were disposed of within twelve months and 82.5 percent within eighteen, and 51.1 percent ran beyond the six-month standard, as computed from that appendix. The figures cover all family cases, contested and uncontested, but they suffice to show that a temporary order commonly governs a child’s life for many months.

Then consider what the Code treats as significant when a final order is later revisited. In a modification suit, a parent’s voluntary relinquishment of “primary care and possession of the child for more than six months” is one of three grounds on which the court may change the primary residence by temporary order. Id. § 156.006(b)(2). The Code thus recognizes in its own text that a sustained period of actual care is itself a fact of legal weight. A temporary order that has assigned primary care for a year has manufactured exactly that kind of fact, though not by anyone’s voluntary choice.

Then consider the child. Chapter 2 reviewed evidence that the continuity and quality of caregiving predict children’s later outcomes, and the international consensus statement on attachment in court recognizes that children form multiple attachments (Forslund et al., 2022). In a retrospective survey of 116 young adults in a university sample, overnights with the father at age two were associated with better young-adult relationships with both parents, after controls that included later parenting time and parental conflict (Fabricius & Suh, 2016, Psychology, Public Policy, and Law, 22(4)). The authors state that their design does not establish causation, and the finding is a group association (Grade C), not a prediction for any individual child. It is nonetheless the kind of evidence a court should weigh before it enters an order that will shape a young child’s first year of a two-household life, and the temporary-order procedure provides no occasion on which it must be weighed.

Finally, consider how cases end. In fiscal year 2025 the district courts disposed of 282,099 family cases; 88,490 (31.4 percent) ended in an agreed judgment, 68,148 (24.2 percent) after a non-jury trial, 15,442 by default, 49,204 by dismissal for want of prosecution, and 109 by jury verdict. Office of Court Admin., District Courts Activity Detail, Sept. 1, 2024 to Aug. 31, 2025, at 6-7 (report run Dec. 19, 2025) (Grade C, court-reported administrative data). Agreement is the dominant outcome, and an agreement is negotiated against the arrangement already in force. A parent who has spent a year as the nonprimary parent under a temporary order negotiates from that position.

The inference is structural, and it must be labeled as inference: the temporary order sets the reference point from which the final order is bargained or tried. No Texas dataset tests it. The Office of Court Administration reports family cases by type and disposition, and Government Code § 72.083(b) requires it to report, court by court, only the clearance rate, the average time from filing to disposition, and the age of the pending caseload. No Texas court, agency, or university dataset found for this report records the conservatorship or possession terms of temporary and final orders, so no one can say how often the final order ratifies the temporary one. The State does not know whether its interim orders decide its final ones, because it has

never asked. The recommendation is a data recommendation: the Office of Court Administration should collect, for every temporary and final order in a suit affecting the parent-child relationship, the conservatorship designation, the possession schedule, whether the order was agreed or contested, and the sex of each parent, and publish the aggregates by court.

4.5 The associate judge

Chapter 201 of the Family Code creates three systems of associate judges: those appointed by an individual court (Subchapter A), those appointed for Title IV-D child support cases (Subchapter B), and those appointed for child protection cases (Subchapter C). This section takes up the first; Section 4.6 takes up the second; the third belongs to Chapter 8.

A judge of a court with family jurisdiction may appoint a full-time or part-time associate judge if the commissioners court authorizes the position. Tex. Fam. Code § 201.001(a). The judge may then refer to the associate judge "any aspect of a suit or action," including any ancillary matter, under the Family Code and several other titles. Id. § 201.005(a). The associate judge may hear evidence, make findings, and recommend orders, and may "render and sign" agreed and default final orders and "a temporary order." Id. § 201.007(a)(2), (8), (10), (14). With a written waiver of de novo review before the hearing, the associate judge may render a final order on the merits. Id. § 201.007(a)(16).

A party may object, and the objection matters, but its reach is narrow. "Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge," and the objection must be filed within ten days after the party receives notice that the associate judge will hear the trial. Id. § 201.005(b), (c). "A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals." Id. § 201.005(b). A temporary order is, by Section 105.001(e), not such an adjudication. The text read therefore gives a parent a right to insist that an elected judge try the final case and no comparable right to insist that an elected judge hear the temporary-orders hearing that, as Section 4.4 showed, so often frames it.

Once an associate judge rules, the clock is short. A party may request a de novo hearing before the referring court by filing a written request "not later than the third working day after the date the party receives notice of" the substance of the associate judge's report or "the rendering of the temporary order." Id. § 201.015(a). The request "must specify the issues that will be presented to the referring court," and the parties may present witnesses "on the issues specified." Id. § 201.015(b), (c). The referring court must hold the hearing within thirty days of the request. Id. § 201.015(f). A party who had a jury before the associate judge may not demand a second jury. Id. § 201.015(i). Meanwhile, "pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court." Id. § 201.013(a).

Precision about what the three-working-day deadline controls is necessary, because it is easy to overstate. In a Subchapter A case, if no timely request is filed, the associate judge's proposed order becomes the referring court's order "only on the referring court's signing the proposed

order or judgment." Id. § 201.013(b). The elected judge still signs. What a missed deadline forfeits is the de novo hearing, and what a timely but narrow request forfeits is a hearing on every issue not named in it. Post-trial motions remain available after the de novo hearing or its waiver, id. § 201.015(h), and a failure to request a de novo hearing does not forfeit an appeal from, or other appellate relief against, the referring court's order, id. § 201.016(a). The notice that tells a parent the de novo right exists may be given "by oral statement in open court," or "by posting inside or outside the courtroom of the referring court." Id. § 201.012(b). A right whose notice may be satisfied by a sheet of paper on a corridor wall is a right designed for parties who already know it. The structure is nevertheless demanding. A parent learns the substance of a ruling that changes the child's schedule, and within three working days must decide whether to seek review, identify every issue in writing, and file, while the ruling is already in force.

A Chapter 201 associate judge must complete twelve hours of judicial education a year, against thirty in the first year and sixteen thereafter for a district judge. Tex. R. Jud. Educ. 2(a), 4(b) (updated Aug. 18, 2025). This report does not suggest that associate judges are less able. The point is accountability: a district judge answers to voters. A Subchapter A associate judge who serves a single court "serves at the will of the judge of that court," Tex. Fam. Code § 201.004(a), and the parties have no say in the appointment.

The defense of the system deserves to be stated at full strength. Associate judges exist to relieve elected courts of volume; without them, temporary-orders hearings would wait longer, and children would live longer under no order at all. The Legislature has provided a safety valve in the de novo hearing, and the Supreme Court of Texas, addressing the Title IV-D system, has treated that hearing as the parties' protection. Office of the Att'y Gen. v. C.W.H., 531 S.W.3d 178 (Tex. 2017), slip op. at 7-8. The answer is not that delay is acceptable. It is that the safety valve is calibrated for efficiency rather than for the interest at stake. Three working days, issue-limited review, an order in force while review is pending, and no guaranteed record (Section 4.8) are each reasonable for a support calculation. They are not obviously adequate for an order that allocates a child's time between two fit parents.

4.6 The Title IV-D court

Subchapter B of Chapter 201 creates associate judges for Title IV-D cases, the child support cases in which the Office of the Attorney General, as the State's Title IV-D agency, provides services under the federal child support program. Chapter 5 examines the federal financing; this section examines the courts it built.

The presiding judge of each administrative judicial region determines which courts need a IV-D associate judge "to complete each Title IV-D case within the time specified in this subchapter," and appoints one from a list of applicants submitted to the Office of Court Administration. Tex. Fam. Code § 201.101(a), (b). The associate judge "serves for a term of four years," but "the appointment of an associate judge for a term does not affect the at-will employment status of the associate judge," and "the presiding judge may terminate an appointment at any time." Id. §

201.101(b). Once an associate judge is appointed for a court, “all Title IV-D cases shall be referred to the associate judge by a general order for each county,” and “referral of Title IV-D cases may not be made for individual cases or case by case.” Id. § 201.101(d). The associate judge is entitled to a salary “equal to 90 percent of the annual salary paid to a district judge with comparable years of service.” Id. § 201.105(a).

The money is stated in the statute. The Office of Court Administration “may contract with the Title IV-D agency for available state and federal funds under Title IV-D,” and the associate judges and their personnel are state employees. Id. § 201.107(a). The presiding judges, state agencies, and counties may contract with the IV-D agency “for available federal funds under Title IV-D to reimburse costs and salaries associated with associate judges.” Id. § 201.107(b). And: “The presiding judges and the Title IV-D agency shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IV-D program.” Id. § 201.107(c). The Legislative Budget Board, as recorded in this report’s claim log from a reading of the document on Oct. 1, 2026, reports that the Office of Court Administration operates 43 child support courts with $23.5 million in All Funds, of which $15.3 million, about 65 percent (computed), is Title IV-D pass-through funding received through an interagency contract with the Office of the Attorney General. Legislative Budget Board, Financing the Judiciary in Texas, ID 9394, at 20.

The Code then tells these courts what to prioritize. “Title IV-D cases must be completed from the time of successful service to the time of disposition within the following time: (1) 75 percent within six months; and (2) 90 percent within one year.” Tex. Fam. Code § 201.110(a). “Title IV-D cases shall be given priority over other cases.” Id. § 201.110(b). “A clerk or judge may not restrict the number of Title IV-D cases that are filed or heard in the courts.” Id. § 201.110(c).

Jurisdiction follows the money. A IV-D associate judge “may render and sign any order that is not a final order on the merits,” may recommend any order after a trial on the merits, and may hear and render an order “on any matter necessary to be decided in connection with a Title IV-D service,” including “a suit affecting the parent-child relationship” and “a suit for modification under Chapter 156.” Id. § 201.104(b), (c), (e)(5), (6). The Supreme Court of Texas, construing an earlier version of the Code, held that a IV-D associate judge could modify conservatorship when the modification related to establishing, enforcing, or modifying support, and that once the Attorney General filed to modify support, the case became a IV-D case referred automatically by general order. C.W.H., slip op. at 1-2, 6-7. The current text lists suits affecting the parent-child relationship and Chapter 156 modifications among the matters a IV-D associate judge may hear. In operation, a parent’s custody can be decided in a support court because a support motion brought it there.

Review in this forum is tighter still. Subchapter B prevails over Subchapter A where they conflict. Id. § 201.102. The request for a de novo hearing is due “not later than the third working day after the date the associate judge signs the proposed order or judgment.” Id. § 201.1042(b). The clock runs from signing, not from the party’s receipt of notice. And if no request is timely filed, the associate judge’s proposed order, other than an order for contempt or immediate incarceration, “shall become the order or judgment of the referring court by operation of law

without ratification by the referring court." Id. § 201.1041(a). In a IV-D case no elected judge need ever sign the order that changes the child's conservatorship. The Supreme Court acknowledged the burden on the parties and located their protection in the de novo hearing, writing, "We assume that the Legislature believed that the efficiencies … outweigh any burden." C.W.H., slip op. at 7-8.

The limits of this evidence must be stated as firmly as the evidence. No source read for this report measures whether IV-D funding, the priority rule, or the clock changes any outcome in any case, and none supports a claim that any judge receives a bonus or faces a quota; federal incentive payments go to the State, and associate judges' pay is fixed by statute. This report attributes no motive to anyone. What the statute establishes is structure: a forum whose officers are appointed and removable at will by an official the parties did not elect, whose funding comes substantially from a federal program measured by support outcomes, whose statute directs its administrators to maximize that funding, whose docket is ordered to give those cases priority, and in which conservatorship may be decided as an incident of support. The Legislature wrote a statutory clock for the cases that draw federal reimbursement and left the cases that decide where a child lives to an aspirational rule (Section 4.10). That is a forum designed around the support obligation, and whether it is the right forum for the parent-child relationship is a question the Legislature can answer without accusing anyone of anything.

The author's recommendation, set out in Section 4.14, is that contested conservatorship and possession be reserved to elected judges and separated from Title IV-D proceedings unless a parent elects otherwise, with a transition for the federal expedited-process requirements that Chapters 5 and 7 address.

4.7 Findings only on request

Findings of fact are where a reviewing court, a party, and the public can see what the judge believed the evidence showed. Texas makes them optional in most family cases.

The general rule is in the Rules of Civil Procedure. "In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law," and the request "shall be filed within twenty days after judgment is signed." Tex. R. Civ. P. 296. The court must send findings within twenty days after a timely request; if it does not, the requesting party "must, within thirty days after filing the original request," file a notice of past-due findings, which extends the court's time to forty days. Tex. R. Civ. P. 297. Once made, findings "must form the basis of the judgment," but omitted unrequested elements "will be supplied by presumption in support of the judgment" where one element was found, and the refusal of a requested finding "is reviewable on appeal." Tex. R. Civ. P. 299. Findings must be in a separate document. Tex. R. Civ. P. 299a.

The Family Code follows the same pattern for the decisions that matter most to children. Where possession is contested and the order varies from the standard possession order, "on request by a party, the court shall state in writing the specific reasons for the variance." Tex. Fam. Code § 153.258(a). The request "must conform to the Texas Rules of Civil Procedure." Id. § 153.258(b).

In a divorce, findings on the division of property, “including the characterization and value of all assets, liabilities, claims, and offsets,” are required “on request by a party.” Id. § 6.711(a). Child support findings are required when a party asks in writing within twenty days of rendition, when a party asks orally at the hearing, or when the amount varies from the guidelines. Id. § 154.130(a).

A few findings are mandatory. A court may limit the rights and duties of a parent appointed as a conservator only “if the court makes a written finding that the limitation is in the best interest of the child.” Id. § 153.072. A court that grants relief to a nonparent over a parent must state the specific facts supporting its finding of significant impairment. Id. § 153.002(c). A court that appoints a receiver in a divorce “shall issue written findings of fact and conclusions of law” within seven days. Id. § 6.502(c). Section 105.001, which governs temporary orders, contains no findings requirement at all.

Set side by side, the provisions describe an order of priorities. A receiver over the marital property receives findings within a week, without anyone asking. A nonparent who takes time from a parent must justify it in writing. A parent whose possession of the child is cut below the standard order receives the reasons only if someone files the right request, in the right form, within the right number of days. The Code instructs the court that the child’s best interest “shall always be the primary consideration,” and then excuses the court from saying, unless asked, how it considered it.

The gap matters for three reasons. First, without findings there is little for mandamus or appeal to review; Rule 299 presumes unrequested findings in support of the judgment, so silence favors the order. Second, without findings no one, including the Legislature, can learn how the best-interest standard is actually applied; Chapter 11 takes up that problem. Third, the request procedure assumes a lawyer who knows the twenty-day and thirty-day deadlines. Section 4.13 shows how many Texas family litigants do not have one.

The strongest objection is burden: written findings in every contested custody ruling would consume judicial time. Two answers follow from the Code itself. The Legislature has already required written findings for the limitation of a conservator’s rights, for nonparent relief, and for receivers, and the courts have absorbed those requirements. And the findings sought need not be elaborate; they need only state, as Section 153.002(c) now requires for nonparents, the specific facts supporting the order. The author’s recommendation is a single rule. In any ruling that designates a conservator, sets or varies possession, restricts a parent’s time or rights, or awards fees against a parent, the court shall state in writing the specific facts relied on. Findings are made without request in every such ruling in a contested case and in every ruling in which a party appears without counsel. In an agreed order with all parties represented, the parties’ agreement and a best-interest statement suffice. Failure to make findings is remedied by remand for findings. The authority to require findings is supported by Tex. Gov’t Code § 22.004.

4.8 Records and reporters

A finding can be tested only against the evidence, and evidence survives a hearing only if

someone records it. The general rule is favorable. In a contested hearing in a suit affecting the parent-child relationship, "a record shall be made as in civil cases generally unless waived by the parties with the consent of the court." Tex. Fam. Code § 105.003(c). The official court reporter or recorder must, "unless excused by agreement of the parties, attend court sessions and make a full record of the proceedings." Tex. R. App. P. 13.1(a). The statute governing official reporters frames the same duty as one performed "on request." Tex. Gov't Code § 52.046(a).

Before an associate judge, the rule is different. "A court reporter may be provided during a hearing held by an associate judge appointed under this chapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing." Tex. Fam. Code § 201.009(a). Otherwise a party, the associate judge, or the referring court "may provide for a reporter," and in the absence of a reporter "the record may be preserved by any means approved by the associate judge," with the expense taxable as costs. Id. § 201.009(b) to (d). Subchapter A, which contains § 201.009, applies to Title IV-D associate judges except to the extent Subchapter B conflicts with it (id. § 201.102), and the provisions of Subchapter B read for this report, including the list of a Title IV-D associate judge's powers in § 201.104, contain no separate recording rule. As the text reads, therefore, § 201.009 governs recording before the support courts as well. Two provisions qualify it. The general rule of § 105.003(c) that a record "shall be made" in a contested hearing is not displaced by any words in § 201.009, and § 201.009(c) allows that record to be "preserved by any means approved by the associate judge" when no reporter is present; no appellate decision reconciling the two was read for this report. And in a hearing on a motion for enforcement, "a record of the hearing … shall be made by a court reporter or as provided by Chapter 201," and it may be waived only on an agreed order or, where incarceration is not requested, by the parties with the court's approval. Id. § 157.161. What the text does not require, outside a jury trial or a contested final termination hearing, is a court reporter.

The consequence follows directly from the mandamus rule. A relator must file "a properly authenticated transcript of any relevant testimony." Tex. R. App. P. 52.7(a)(2). A parent whose temporary-orders hearing was held before an associate judge with no reporter has, at most, whatever substitute record the associate judge approved, and may have nothing that qualifies as a transcript. On a de novo request, the referring court "may consider testimony or other evidence in the record," id. § 201.009(e), but the record may be thin or absent.

The Code requires recording elsewhere. A child custody evaluator must record every interview with a child on audio and video. Tex. Fam. Code § 107.112(b-1). The Legislature has decided that what a child says to an evaluator in an office must be preserved. It has not decided that what a judicial officer hears and rules in the courtroom, when that ruling sets the child's schedule, must be preserved. The interview is recorded; the decision is optional.

The recommendation is inexpensive relative to the interest at stake: record every hearing in a suit affecting the parent-child relationship, before any judicial officer, by reporter or by audio and video (audio alone where no child is present), phased in by court size with a fiscal note required before the effective date, and allow no waiver by a self-represented party without a finding on the record that the party understands it. Chapter 11 develops the broader case.

4.9 The jury right, unused

The Texas Constitution provides that "the right of trial by jury shall remain inviolate," subject to legislative regulation. Tex. Const. art. I, § 15. The Family Code gives any party in a suit affecting the parent-child relationship the right to demand a jury, except in adoption and parentage suits, and in a jury trial "the court may not contravene a jury verdict" on the appointment of a sole or joint managing conservator or a possessory conservator, on which joint managing conservator designates the child's primary residence, and on whether and where to restrict the residence geographically. Tex. Fam. Code § 105.002(a)-(c)(1). The court "may not submit to the jury questions on" support, "a specific term or condition of possession of or access to the child," or any other right or duty of a conservator. Id. § 105.002(c)(2).

The right is almost never used. In fiscal year 2025, 109 of the 282,099 family cases disposed of in the district courts, 0.04 percent, ended in a jury verdict. Office of Court Admin., District Courts Activity Detail FY 2025, at 6-7. Across district and statutory county courts, 21 of 56,182 divorces with children and 20 of 18,895 other parent-child suits disposed of that year ended in a jury verdict, as were 10 of 10,232 custody modifications, as computed from the two OCA reports. In fiscal year 2024, district and statutory county courts disposed of 310,101 family cases, and 103 ended in a judgment on a jury verdict; a jury was selected in 131. Office of Court Admin., Family Case Activity Detail, Sept. 1, 2023 to Aug. 31, 2024, at 3-4 (report run May 2, 2025). These are court-reported counts (Grade C). They include case types that never involve conservatorship, and they do not record jury demands later withdrawn or settled.

The data establish that the jury does not decide Texas custody in practice; they do not establish why. Cost, delay, counsel's advice, and the narrow range of jury issues are each plausible, and no source read measured any of them. Two design features bear on the question. The jury may decide who is a conservator and who designates the residence, but not the schedule, which is the thing a child actually experiences. And the route many cases travel, through a temporary order and often an associate judge, passes the point at which a jury could matter before a jury could be seated. A party who tried the case to a jury before an associate judge may not demand a second jury on de novo review. Tex. Fam. Code § 201.015(i).

The author's recommendation is to preserve the jury right and make it usable: extend the binding verdict to the presumptive allocation of possession time between fit parents, require the court to inform each self-represented party of the right in writing at the first hearing, and set jury trials in conservatorship cases on a priority docket. A right exercised in about four of every ten thousand cases is not functioning as a check on anything.

4.10 Time standards: a rule for children, a statute for collections

Texas has two kinds of deadlines in family cases, and which applies depends on whether federal money is involved. For family cases generally, the deadline is a court rule. District and statutory county judges "should, so far as reasonably possible, ensure that all cases are brought to trial or final disposition" in conformity with time standards, which for contested family cases is "within 6 months from appearance date or within 6 months from the expiration of the waiting period

provided by the Family Code where such is required, whichever is later," and for uncontested family cases three months. Tex. R. Jud. Admin. 6.1(b). The rule excuses "especially complex cases or special circumstances." Id. 6.1(d). No statute attaches a consequence to missing it, and the Office of Court Administration's statutory reporting duty runs only to clearance rates, average time to disposition, and the age of pending cases. Tex. Gov't Code § 72.083(b).

For Title IV-D cases, the deadline is a statute: seventy-five percent within six months of service, ninety percent within one year, priority over other cases, and no restriction on the number filed or heard. Tex. Fam. Code § 201.110. The Legislature wrote a mandatory clock, a priority rule, and an anti-rationing rule for the cases that generate federal reimbursement, and an aspirational standard, qualified by "so far as reasonably possible," for the cases that decide where children live. The State measures its courts by how fast they clear support cases. It does not measure them by what happens to the child.

The Texas Conservative Coalition Research Institute staff paper "Texas Family Courts," in the edition read for this report, proposes a disposition deadline of twelve to eighteen months for family cases (p. 13), longer than the six-month standard Rule 6.1 already sets, and lists child custody evaluations among the exceptions to that deadline (p. 13), which exempts from the proposed clock the process the Committee's own charge names when it asks about "repetitive child evaluations." The same paper's appendix, as computed for this report, shows that most family cases already close within twelve months. A deadline that most cases already meet, with an exception for the slowest component of the cases that matter most, measures the docket rather than the child. The paper's proposal to disclose relationships between judges and those who appear before them is one this report supports; the disagreement is about what is measured.

A deadline that binds support cases and merely encourages custody cases should run the other way, or both ways: the six-month standard for contested conservatorship cases should have statutory force, and a temporary conservatorship order should expire after a fixed period unless renewed after a hearing with written findings.

4.11 Fees: the price of being heard

The court may make temporary orders "for payment of reasonable and necessary attorney's fees, court costs, and expenses." Tex. Fam. Code § 105.001(a)(5); see id. § 6.502(a)(4) (divorce); § 109.001(a)(5) (pending appeal). At judgment, "in a suit or motion under this title and in a habeas corpus proceeding, the court may render judgment for reasonable and necessary attorney's fees, court costs, and expenses and order the judgment and postjudgment interest to be paid directly to an attorney," and the judgment "may be enforced in the attorney's name by any means available for the enforcement of a judgment for debt." Id. § 106.002(a), (b). Section 106.002 took its present form in H.B. 2524 (89th Leg., R.S., ch. 593, § 20, eff. Sept. 1, 2025).

In enforcement, fee-shifting is mandatory. If the court finds that a respondent failed to make child support payments, "the court shall order the respondent to pay the movant's reasonable and necessary attorney's fees, court costs, and expenses in addition to the arrearages,"

enforceable "by any means available for the enforcement of child support, including contempt," and payable directly to the attorney. Id. § 157.167(a). A finding that a respondent failed to comply with a possession order likewise requires a fee award, enforceable by contempt where the court finds enforcement necessary for the child's welfare. Id. § 157.167(b). The court may waive the requirement for good cause stated in its reasons, except in certain arrearage cases. Id. § 157.167(c), (d).

The custody evaluator is paid the same way. "If the court orders a child custody evaluation to be conducted, the court shall award the person appointed as the child custody evaluator a reasonable fee for the preparation of the child custody evaluation that shall be imposed in the form of a money judgment and paid directly to the person," who "may enforce the judgment for the fee by any means available under law for civil judgments." Id. § 107.115.

These provisions have a defensible purpose. Fee awards can equalize access when one parent controls the family's money, and a lawyer who can collect is a lawyer who will take the case. The structure nonetheless has consequences the Legislature should weigh. A temporary fee order, like any temporary order, is not appealable and comes with no findings. The fee judgment runs in favor of a person who is not a party to the parent-child relationship and whose interest in its outcome is financial. The evaluator's fee is a money judgment the court "shall award," conditioned on no measure of the evaluation's quality. And the mandatory fee award in a support enforcement can fall on a parent whose nonpayment arose from inability to pay, unless that parent carries the four-part affirmative defense described in Section 4.12. None of this implies improper motive in anyone. It means that the cost of contesting an order about one's child is set by a statute whose beneficiaries include the professionals the litigation employs. Chapter 5 examines the economics; Chapter 9 examines the legislative record of the fee statutes.

4.12 Contempt as the enforcement tool

Every order described in this chapter is enforceable by jail. "The court may enforce by contempt any provision of a temporary or final order," and "temporary order" includes a temporary restraining order, a standing order, an injunction, and any other temporary order. Tex. Fam. Code § 157.001(b), (e); see id. § 105.001(f). Every order that provides for support or possession must carry, in bold or capital letters, the warning that a finding of contempt "may be punished by confinement in jail for up to six months, a fine of up to $500 for each violation, and a money judgment for payment of attorney's fees and court costs." Id. § 105.006(d). The Code requires the order to explain, in capital letters, how a parent may be jailed under it. It does not require the order to explain, unless asked, why the parent's time with the child was set as it was.

The penalty tracks the general contempt statute: a fine of not more than $500, confinement for not more than six months, or both. Tex. Gov't Code § 21.002(b). The Government Code caps confinement for contempt at eighteen months, or for civil contempt at the lesser of eighteen months or compliance, but for disobedience of an order to make periodic child support payments, the Code of Criminal Procedure and Chapter 157 apply "and Subsection (h) does not

apply to that person." Id. § 21.002(f), (h). In a support contempt, the respondent bears the burden on affirmative defenses by a preponderance, Tex. Fam. Code § 157.006(b), and inability to pay is an affirmative defense requiring proof that the respondent lacked the ability to pay, lacked property that could be sold or pledged, attempted unsuccessfully to borrow, and knew of no source from which the money could be obtained, id. § 157.008(c). An enforcement order imposing confinement for civil contempt must state the conditions for release. Id. § 157.166(c).

Texas exceeds the Turner model in one respect and omits one of its safeguards. Turner v. Rogers, 564 U.S. 431 (2011), held that due process does not automatically require appointed counsel for an indigent parent facing civil contempt for unpaid support, provided the State supplies substitute safeguards: notice that ability to pay is the critical issue, a form or equivalent means of eliciting financial information, an opportunity to respond, and an express finding that the parent has the ability to pay. Texas goes further on counsel: where incarceration is a possible result, the court must inform an unrepresented respondent of the right to counsel and appoint counsel if the respondent is indigent. Tex. Fam. Code § 157.163(a), (b), (e). But the Chapter 157 sections read for this report place the burden of proving inability on the respondent and do not require an express finding of present ability to pay before confinement. Hicks v. Feiock, 485 U.S. 624, 631-33 (1988), permits that allocation of the burden in a civil proceeding, and only there; whether a sanction is civil or criminal turns on "the character of the relief," not the label.

An associate judge may order the detention of a contemnor, to be presented to the referring court the same day or continued up to seventy-two hours if that court is unavailable. Tex. Fam. Code §§ 201.007(a)(13), 201.013(c). In the IV-D courts, a contempt or incarceration order becomes the referring court's order only if the referring court signs it and it meets Section 157.166, id. § 201.1041(b), and a respondent facing a contempt finding is entitled to appear in person, id. § 201.1045(d). These are real protections, and they show that the Legislature knows how to require an elected judge's signature when liberty is at stake. It has not required one when the parent-child relationship is at stake.

The architecture of support enforcement belongs to Chapter 7. For the operational argument it is enough that the forum that may decide conservatorship as an incident of support also holds the power to jail for nonpayment, and that the only provision read for this report that appoints counsel for a parent in a private suit, Section 157.163, is triggered by the possibility of jail rather than the possibility of losing the child.

4.13 The self-represented parent

Every procedure described in this chapter assumes a lawyer: findings requested within twenty days and a past-due notice within thirty (Tex. R. Civ. P. 296, 297), an objection to an associate judge within ten days (Tex. Fam. Code § 201.005(c)), a de novo request by the third working day naming the issues (id. §§ 201.015(a), (b), 201.1042(b)), an authenticated record for mandamus (Tex. R. App. P. 52.7), and a reporter someone must arrange (Tex. Fam. Code § 201.009(b)).

Many Texas parents meet these requirements alone. In fiscal year 2025 the petitioner represented himself or herself in 85,539 district court family cases. Office of Court Admin.,

District Courts Activity Detail FY 2025, at 6-7. The figure counts petitioners only, not respondents, and it covers all family case types. It is large enough to show that a system whose protections depend on timely written requests places those protections, for a great many Texans, in the hands of people who may not know they exist.

The Supreme Court said of a procedure that denied unwed fathers a hearing that "procedure by presumption is always cheaper and easier than individualized determination," and that "the Constitution recognizes higher values than speed and efficiency." Stanley v. Illinois, 405 U.S. 645, 656-57 (1972). The Texas procedure does not deny a hearing. It offers individualized determination and then makes each safeguard of that determination something a parent must know to ask for. For the represented parent, that is a matter of diligence. For the self-represented parent, it is a matter of luck. The author's recommendation is that every safeguard recommended in this chapter (findings, recording, notice of the right to an elected judge and a jury, and the de novo window) operate automatically, without request, whenever any party is self-represented.

4.14 The operational argument assembled

Weighed under the Mathews framework adopted in Chapter 1, the parts assemble as follows. The private interest is the relationship between a child and each fit parent, which the Supreme Court has called among the oldest liberty interests it recognizes, which Texas has placed in its Constitution, and which the Code itself protects with clear and convincing evidence and specific findings when a nonparent intrudes on it (Tex. Fam. Code § 153.002(b), (c)).

The risk of error is built into the sequence. The decisive interim allocation is made by temporary order, on a preponderance, with no findings required (Section 4.2), often by an appointed associate judge (Section 4.5), sometimes in a court funded substantially by the federal support program and directed to give support cases priority (Section 4.6), possibly with no reporter (Section 4.8), reviewable before the elected judge only on a request filed by the third working day, and above the trial court only by mandamus (Section 4.3), while the order remains in force. That order sets the reference point for a final decree reached by agreement in about a third of cases, by a judge alone in about a quarter, and by a jury in about four of every ten thousand (Sections 4.4, 4.9). Fees may then be assessed against a parent and paid directly to counsel or the evaluator (Section 4.11), every provision is enforceable by contempt (Section 4.12), and each existing safeguard depends on a timely request that a self-represented parent is least likely to make (Section 4.13). The value of added safeguards cannot be measured from the State's data, because the State does not record how often temporary orders are wrong or how often final orders ratify them. That is a reason to collect the data, not a reason to presume the risk small.

The government's interest is real: dockets are heavy, children need interim arrangements, support must be established within federal timeframes, and every added procedure takes time. The Supreme Court of Texas, in the IV-D setting, assumed that the Legislature believed the efficiencies of associate judges outweigh the burden on parties who must seek de novo review.

C.W.H., slip op. at 7-8. That was a reading of a statute the Legislature wrote and can revise. The objection that reform will slow the courts and enlarge appellate dockets is offered without data, as no source read measures either effect; several of the safeguards below cost little because the Code already imposes them elsewhere; and the Code already gives speed and priority to support cases. The question for the Legislature is whether the parent-child relationship deserves at least the procedural attention a support case receives.

The recommendations of this chapter, stated as the author's own, are these:

- Fallback only (if repeal of no-fault divorce fails): abolish temporary orders on conservatorship and possession in no-fault divorce suits, fixing equal possession for fit parents by statute during the case; protective orders, emergency removal, and criminal law are untouched, and emergency safety orders remain available on a corroborated showing of imminent danger for no more than fourteen days without a hearing with findings.
- Require written findings of the specific facts relied on, without request, in any ruling that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees against a parent, in every contested case and in every ruling in which a party appears without counsel; an agreed order with all parties represented needs only the parties' agreement and a best-interest statement; the remedy for missing findings is remand for findings.
- Make those orders appealable at once on an accelerated schedule with no automatic stay, amending Sections 105.001(e), 6.507, and 109.001(c) on the model of Section 109.001(b-5).
- Record every hearing in a suit affecting the parent-child relationship before any judicial officer.
- Reserve contested conservatorship and possession to elected judges, refer them to an associate judge only on each parent's written consent, and separate them from Title IV-D proceedings unless a parent elects otherwise; where associate judges sit, allow fourteen days from receipt for a de novo request on any issue, with a stay on request absent immediate danger.
- Give the six-month standard for contested conservatorship cases statutory force, limit the life of temporary conservatorship orders, and require published data, by court, on the terms of temporary and final orders, agreed and contested, by sex of parent.
- Make the jury right usable, with written notice to self-represented parties and priority settings.
- Require an express finding of present ability to pay before confinement for civil contempt.
- - Provide that a plea is not a finding: no plea, deferred adjudication, plea agreement, stipulation, agreed order, or default is evidence of, or a basis for, any reduction of a parent's possession, access, or conservatorship, and only a jury's finding may support a reduction on the ground of alleged criminal conduct (text in Section 6.2.4).

Each recommendation amends a named section and extends a model the Code already

contains. None depends on a finding of improper motive; each depends only on the proposition that a fundamental right deserves a procedure built for it.

4.15 What follows

This chapter has shown that the Code as operated allocates children's relationships through a sequence designed for efficiency: temporary orders without findings or appeal, appointed officers on short review clocks, optional records, a jury right almost never exercised, and fees and contempt as the means of enforcement. It has also shown that the one part of the system with a statutory clock, a priority rule, and a dedicated bench is the part financed by the federal child support program. Chapter 5 follows that thread to its source, examining how Title IV-D and Title IV-E finance the Texas system, what the federal performance measures reward, and what the economics of fees and family fragmentation cost the State and its children. # Chapter 5. The Money

5.1 From the courtroom to the ledger

The preceding chapter followed a Texas custody case through the Code as it is operated: temporary orders reviewable only by mandamus, referral to associate judges, a separate docket for Title IV-D cases whose unchallenged orders become the referring court's orders by operation of law, findings that issue only on request, fee shifting, and contempt. That chapter described procedure. This chapter asks what pays for it, and what the payment counts. The question matters because a legal system does what it is funded to do, measures what it is paid to measure, and tends to neglect what no one is paid to count.

The finding of this chapter can be stated in one sentence and defended in every clause. Federal law pays Texas, without a ceiling, to establish and collect support orders; it measures the State's child support program by five numbers, none of which concerns a child's relationship with either parent; it declines to reimburse the State for helping a child keep time with a parent; and it pays for a child's care outside the home on an open-ended basis while capping and conditioning the money that would keep a family together. Texas law, for its part, directs the State's own officers to maximize those federal funds, built a dedicated bench and a statutory clock for the cases that generate them, and left the cases that decide where a child lives to an aspirational court rule. None of this requires a claim about anyone's motive, and the chapter makes none. The federal measures count orders, collections, and placements. They do not count whether a child kept a relationship with a fit parent. No source read for this report shows that the counting changes what any judge or caseworker does, and the report does not claim it does. It asks the Legislature to measure what happens, so that no one has to argue about motive. The structure is written in the United States Code, the Code of Federal Regulations, the Family Code, and the State's own budget documents, and each is quoted below.

The chapter then does three things that an advocate's account would skip. It reports what Texas actually collects, measured against what it is owed, and shows that the State is an ordinary collector carrying an extraordinary load. It separates what the foster care financing evidence

shows (that payment levels change placement behavior) from what it does not show (that federal money drives Texas removals), because the State's own figures cut against the second claim. And it lays out the cost evidence for family fragmentation in Texas under a rule this report applies without exception: cost estimates measured in different units, over different populations, by different methods, are never added together.

The method throughout is the one set out in Chapter 1. Statutes and regulations are quoted from the text read. Administrative figures are reported as the agency reported them, with the year. Research findings carry their grade: causal language only for randomized or natural-experiment designs, "predicts" for strong longitudinal evidence, "is associated with" for correlational work. Where this chapter computes a figure from reported ones, it says so.

5.2 Title IV-D: an open match and a closed list

Title IV-D of the Social Security Act finances the child support program. The federal government reimburses 66 percent of a State's allowable administrative expenditure on that program, and the match is open-ended, with no ceiling on the amount a State may claim (Congressional Research Service, RS22380; 42 U.S.C. § 655). Total federal and state child support expenditures reached $6.6 billion nationally in fiscal year 2024 (CRS RS22380, Jan. 12, 2026 update). In the Texas budget the match works exactly as the summary describes: general revenue appropriated to the child support program draws federal funds at 66 percent, and the Legislative Budget Board scores proposed cuts by the federal match they would forfeit. One option, eliminating temporary employee contracts in the Office of the Attorney General, was scored as an $18.5 million loss of federal matching funds (Legislative Budget Board, Summary of Recommendations, Office of the Attorney General). What follows from an open match is simple arithmetic. Every state dollar spent on the activities the program recognizes brings roughly two federal dollars with it, so the marginal cost to the State of doing more of those activities is about a third of their price.

On top of the match sits an incentive system, and it is in the incentive system that the program states what it counts. Congress set the formula in 42 U.S.C. § 658a (2024 ed.). Each State receives a share of a national "incentive payment pool," which the statute fixes year by year through fiscal year 2008, at $483,000,000 that year, and thereafter grows by the change in the Consumer Price Index (§ 658a(b)(2)(A)). A State's share depends on its "incentive base amount," computed from five measures of performance: "The paternity establishment performance level," "The support order performance level," "The current payment performance level," "The arrearage payment performance level," and "The cost-effectiveness performance level" (§ 658a(b)(4)(A) to (E)). The implementing regulation states the same list in plainer words. "The child support incentive system measures State performance levels in five program areas: Paternity establishment; support order establishment; current collections; arrearage collections; and cost-effectiveness" (45 C.F.R. § 305.2(a) (eCFR, Oct. 1, 2026)). Three of the five, paternity, orders, and current collections, also drive federal penalties (§ 305.2(a)).

The five measures are not abstractions; the regulation defines each, and the definitions show

what counts. The order measure "requires a determination of whether or not there is a support order for each case," and "includes all types of legally enforceable orders, such as court, default, and administrative" (§ 305.2(a)(2)). A default order counts exactly as much as an order entered after a hearing on the payer's income. The collections measures count dollars. The cost-effectiveness measure divides dollars collected by dollars spent (§ 305.2(a)(5)). The weight placed on the dollars is also written down. A State's "collections base," the amount to which its performance percentages are applied, counts collections in cases where support is assigned to the State because the family received public assistance at twice their face value, and all other collections at face value (§ 658a(b)(5)(C); 45 C.F.R. § 305.31(f)). The base for the first three measures is the full collections base, and for arrears and cost-effectiveness 75 percent of it (§ 658a(b)(5)(A); § 305.2(b)).

Read as a whole, the formula pays for establishing paternity, for entering orders, and for moving money, with a premium on money that reimburses public assistance. The State is measured by five numbers. None of them is a child. No measure asks whether a child still has two parents in his life, how much time the child spends with each, whether the order left the paying parent able to house the child during his own time, or whether the child is better off. That is not an inference from silence. The regulation lists the measures and closes the list.

The program's treatment of parenting time completes the picture. According to the Congressional Research Service, "CSE administrative costs related to parenting time arrangements are not considered to be eligible expenditures for federal reimbursement," and a State that wishes to spend its incentive payments on parenting time work needs a federal exemption to do so (CRS RS22380; CRS IF13043, Parenting Time Agreements and Child Support; Tier 2 congressional summaries). The single federal funding stream aimed at a child's access to the other parent, the Access and Visitation grant program under section 469B of the Social Security Act, is $10 million a year for all States and territories combined (CRS RS22380). Against $6.6 billion in program spending, that is about fifteen hundredths of one percent (computed). In Texas the Office of the Attorney General reports $953,374 in federal Access and Visitation funds plus $120,000 in state funds, serving 26,531 customers, and states that visitation enforcement sits outside the IV-D program (Director's written testimony to the House Ways and Means subcommittee; the date of the testimony was not recorded). Set beside the Texas program's fiscal year 2024 administrative expenditure of $457,716,124 (Office of Child Support Services, FY2024 Preliminary Data Tables), the federal access money is about two tenths of one percent (computed).

The statute also tells a State what to do with its incentive money. "A State to which a payment is made under this section shall expend the full amount of the payment to supplement, and not supplant, other funds used by the State" to carry out the IV-D plan or for activities approved by the Secretary "which may contribute to improving the effectiveness or efficiency of the State program operated under this part" (42 U.S.C. § 658a(f)). The payment earned by producing orders and collections is returned to the program that produced them. The incentive is therefore not only a reward but the working capital of the enterprise.

What follows from 5.2 is narrow and firm. The federal program pays the States to do one thing

well, and it does not pay them to do the thing this report's thesis puts first. A legislature that wants to know whether the program serves the child's relationship with each parent will not find the answer in the program's measures, because the measures were not designed to ask.

5.3 The Texas machinery built around the match

Texas did not merely accept the federal program. It built institutions around it, and it told them, in statute, to maximize the money.

The Office of the Attorney General "is designated as the state's Title IV-D agency" (Tex. Fam. Code § 231.001; Family Code text rendered Dec. 13, 2025, used throughout this chapter). The agency may contract with other agencies, political subdivisions, and vendors, and those "agreements or contracts between the agency and other state agencies or political subdivisions of this or another state … and agreements or contracts with vendors for the delivery of program services are not subject to Chapter 771 or 783, Government Code" (§ 231.002). The interlocal and uniform purchasing statutes that discipline ordinary state contracting do not reach the child support program's contracts.

Chapter 201, Subchapter B, creates a separate judiciary for Title IV-D cases. Its associate judges are appointed by the presiding judges of the administrative judicial regions, all IV-D cases are referred to them by general order, and, as Chapter 4 showed, an unchallenged proposed order "shall become the order or judgment of the referring court by operation of law without ratification by the referring court" (§ 201.1041(a)). The financing clause of the same subchapter reads in full in its operative part: "(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract with the Title IV-D agency for available federal funds under Title IV-D to reimburse costs and salaries associated with associate judges, court monitors, and personnel appointed under this subchapter and may also use available state funds and public or private grants. (c) The presiding judges and the Title IV-D agency shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IV-D program" (§ 201.107(b), (c)). The officials who appoint the IV-D bench and the agency that litigates before it are directed by the same sentence to maximize federal funds.

The Legislative Budget Board describes the result. The Office of Court Administration employs the associate judges of 43 child support courts, paid 90 percent of a district judge's salary and appointed by the regional presiding judges, and $15.3 million of the program's $23.5 million cost is funded by IV-D pass-through money under an interagency contract with the Attorney General (Legislative Budget Board, Financing the Judiciary in Texas, ID 9394, p. 20, as recorded in this report's claim log). The Supreme Court of Texas, construing an earlier version of the Code and upholding the authority of a IV-D associate judge to modify conservatorship when the modification related to support, reasoned that the parties' protection is the de novo hearing before the elected judge and assumed "that the Legislature believed that the efficiencies" of the IV-D associate judge system outweigh the burden (Office of the Att'y Gen. v. C.W.H., 531 S.W.3d 178 (Tex. 2017), slip op. at 7 to 8). The Court was right that the Legislature may make that

choice. This chapter asks only that the choice be seen for what it is: a bench funded largely by the program whose cases it hears, operating under a statute that tells its appointing authorities to maximize that program's federal revenue.

The Attorney General's own filings describe the incentive structure in its own words. Its Legislative Appropriations Request for fiscal years 2028 and 2029 describes the agency as "the highest performer among states receiving the largest share of federal performance-based incentives appropriated to operate the Child Support Division" (Office of the Attorney General, LAR FY2028-29). Texas received $97,071,543 in incentive payments for fiscal year 2022, against $49,205,738 for California (OCSS FY2024 Preliminary Data Tables). The Administration for Children and Families reports that Texas is one of four States that appropriate little or no general revenue for the State share of the program and rely instead on incentive payments and retained collections (ACF, State Financing of Child Support Enforcement Programs, extract read). The incentives earned by hitting the five measures are appropriated to pay the people whose work hits them. That is not a scandal. It is a design, and the measures count orders and collections.

The contrast with the rest of the family docket is the sharpest fact in this section. The Family Code sets a statutory time for disposition of Title IV-D cases (§ 201.110). Contested family cases outside that program are governed by Texas Rule of Judicial Administration 6.1, which sets a six-month disposition standard that courts are to meet "so far as reasonably possible" and that carries no consequence when missed. Texas wrote a statute for the cases that generate federal reimbursement and a suggestion for the cases that decide where a child lives. The constitutional interest that Article I, Section 37 now names, a parent's "fundamental right to exercise care, custody, and control of the parent's child," has no dedicated bench, no statutory clock, no federal match, and no performance measure. The interest in collecting support has all four.

5.4 What Texas collects, measured honestly

An argument about incentives invites an easy overstatement: that Texas, rewarded for collection, must collect with unusual zeal. The State's own data do not support that claim, and this report does not make it. Texas is not the nation's most effective collector. It collects at the national median rate on a support load far larger than other States carry.

The Office of Child Support Services publishes each State's caseload, amounts due, and amounts distributed. The figures for fiscal year 2024, with California, Florida, and New York for comparison, are below.

FY2024	Texas	California	Florida	New York
Current support due	$5,060,347,061	$2,661,949,629	$1,608,168,386	$1,772,312,487
Current support distributed	$3,245,236,793	$1,669,698,016	$1,021,464,742	$1,181,658,777
Share of current support distributed	64.1%	62.7%	63.5%	66.7%

FY2024	Texas	California	Florida	New York
Total distributed collections	$4,285,157,499	$2,417,666,249	$1,417,075,760	$1,570,516,590
IV-D cases	1,462,739	1,020,241	570,733	599,515
Current support due per case	$3,460	$2,609	$2,818	$2,956
Total arrears due	$20,515,065,735	$17,169,969,749	$6,321,635,891	$7,110,689,992
Administrative expenditure per case	$313	$1,074	$558	$605

Source: Office of Child Support Services, FY2024 Preliminary Data Tables P-4, P-36, P-38, P-44, P-52, P-83 to P-85; per-case figures computed.

Three findings follow from the table and the full 51-jurisdiction file. First, Texas distributed 64.1 percent of current support due, against a median of 64.0 percent, ranking 25th of 51. On the measure that most directly asks whether owed support reaches children, Texas is the median State. Second, Texas is owed far more. It carries 46.7 IV-D cases per 1,000 residents against a median of 30.1, and $3,460 of current support due per case, sixth highest, against a median of $2,521 (OCSS P-52, P-83). Third, the size of Texas collections is explained by the size of what is owed. In a log-log regression of total collections on current support due across the 51 jurisdictions, the fit is nearly perfect (R-squared 0.996), and Texas collects 0.976 of the amount the model predicts. That regression is this report's own computation on one year of reported figures and is offered as inference, not as a finding about conduct.

The point deserves care because the opposite reading is tempting. Texas distributed $4.29 billion in fiscal year 2024, about 1.77 times California's total with about 79 percent of California's population (computed from the tables and Census estimates), and it reports a collections-to-cost ratio of $9.61 against a national figure of $4.24 (OCSS; the national figure is from the FY2024 report's landing page). An earlier draft of this report treated the population-based comparison as a sign of unusual performance. That reading was wrong and has been retired. When collections are compared to what is owed rather than to population, the Texas advantage disappears. What remains is a program with many orders, large orders, and low reported administrative cost per case.

The arrears are the clearest sign of what large orders produce. Texas reported $20,515,065,735 in total arrears due at the end of fiscal year 2024, up from $17,882,087,824 in fiscal year 2020, in 1,076,427 cases, of which 625,350 paid something toward arrears during the year (OCSS P-85 to P-88). That is 18.0 percent of all arrears reported by the 51 jurisdictions, from a State with roughly 9 percent of the national population (computed). In fiscal year 2024 Texas distributed $1,102,684,515 in arrears payments. At that rate, with no new arrears, the existing balance would take about 18.6 years to retire (computed; arithmetic, not a forecast). Definitions of arrears differ across States, and the comparison should be read with that caution.

None of these figures shows misconduct, and this report draws no inference about anyone's

intent. A rank, a regression, or a ratio on reported numbers is not a test of conduct. What the figures do show is a set of questions the State has never been required to answer in public: why Texas carries half again as many IV-D cases per resident as the median State; how much of the amount due per case reflects orders entered by default or on imputed income rather than after a hearing on actual earnings; what costs counties, courts, and prosecutors bear that do not appear in the State's claim and therefore lower its reported cost per case, which in turn raises the cost-effectiveness ratio on which incentives are paid; and how the incentive payments are spent. Each is answerable from records the State already holds. Chapter 7 takes up the first two in detail, because they are the questions of how support is set.

5.5 Title IV-E: the removal side

Title IV-E of the Social Security Act finances foster care and adoption assistance. Its structure differs from IV-D, and the difference matters for the argument this chapter makes. Once a child is removed and eligible, foster care maintenance payments are reimbursed on an open-ended basis at the State's Federal Medical Assistance Percentage, which ranges from 50 to 83 percent; administrative costs are reimbursed at 50 percent; and training costs at 75 percent (Children's Bureau, Title IV-E Foster Care program page; CRS R45270). From 1980 until 2018, federal reimbursement was open-ended only after a child was removed, while funds to prevent removal were capped at a comparatively low amount (CRS R45270, as summarized; Tier 2). The Family First Prevention Services Act (Pub. L. 115-123, 2018) opened IV-E to time-limited prevention services for children who are candidates for foster care, restricted to services rated by the Title IV-E Prevention Services Clearinghouse. For thirty-eight years the federal government wrote an open check for a child living apart from his parents and a capped one for keeping the family together. Family First narrowed that gap without closing it.

The money reaches the courthouse. The Department of Family and Protective Services contracts with counties so that county attorneys who represent the Department in abuse and neglect cases can be reimbursed. Its Title IV-E Finance Handbook for County Contracts states that "County legal contracts are a subset of the types of contracts DFPS may enter into with a county for Title IV-E reimbursement," that reimbursable items include salaries and benefits for the share of legal staff time spent on Title IV-E work and "Court fees to file a petition for a judicial determination required under Title IV-E," and that administrative costs are reimbursed at 50 percent and training at 75 percent (DFPS, Title IV-E Finance Handbook for County Contracts, §§ 5000, 5100, 5111, 5115, read Oct. 7, 2026, through a web retrieval tool that summarizes the page and returned the quoted words as verbatim). The salaries of court employees are not reimbursable (§ 5115), and judges are not paid by IV-E. What federal money funds, in part, is the legal work of the side that seeks removal.

Federal law is exacting about findings, and that exactness is itself a financial fact. IV-E maintenance is payable only if a removal rests on "a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts … have been made" (42 U.S.C. § 672(a)(2)(A)). The regulation requires the contrary-to-the-welfare finding "in the first court ruling that sanctions (even

temporarily) the removal," requires the reasonable-efforts finding within 60 days, demands that both be explicit, case-specific, and stated in the order, and accepts neither affidavits, nunc pro tunc orders, nor orders that merely recite State law (45 C.F.R. § 1356.21(b)(1), (c), (d)). A missed finding forfeits reimbursement for the whole stay. The federal government thus pays for removal only when a court has said, in specific words, why removal was necessary. A Texas reform that requires more and better findings at removal would protect federal dollars rather than endanger them, a point Chapter 8 develops.

The temptation at this point is to say that federal money drives Texas removals. The State's own figures forbid it. The Department reports that its federal share of funding fell from 52 percent to 35 percent over twelve years (DFPS Self-Evaluation Report, Aug. 31, 2025, read pp. 1 to 49). In fiscal year 2024 the Department's revenue was $1,634,512,121 in general revenue and $896,904,628 in federal funds, and the federal share of Title IV-E foster care was $93,378,408 for administration, $58,543,122 for maintenance at the FMAP rate, and $7,999,494 for training, while the Department drew $302,821,248 from the Temporary Assistance for Needy Families grant (Self-Evaluation Report, pp. 52, 54 to 55). Texas's total federal foster care claims in fiscal year 2023 were $174.3 million, sixth among the States, against $1,318.1 million for California, $351.5 million for New York, and $248.4 million for Florida, and only 27.9 percent of Texas children in placement were IV-E participants, 41st of 50 (Children's Bureau, Form CB-496, FY2023). A State that claims IV-E for barely a quarter of the children in its care, and whose federal share has fallen by a third in twelve years, is not a State whose removals are explained by federal reimbursement. The structural point about the federal design stands. The causal claim about Texas does not, and this report does not make it.

The federal agencies themselves have acknowledged one way in which their two programs collide. In a joint letter of July 29, 2022, the Children's Bureau and the Office of Child Support Services advised that foster care cases should be referred to child support enforcement only in rare circumstances; the Texas Department's handbook provides that it can waive arrears owed to the State but not the federal share of IV-E (Joint letter, July 29, 2022; DFPS handbook § 5343.12). The letter's advice is enough for the point: the federal government has recognized that the child support machine, applied to a family in crisis, can work against the child's return home.

5.6 Does money move children? The tested analogue

The financing structure establishes what the programs count and pay for. Whether payment changes behavior is an empirical question, and the best evidence on it comes from foster care, where economists have tested it.

Doyle and Peters (2007) used variation in foster care subsidies across 37 States from 1987 to 1995 and found that the supply of foster care responds to payment levels, with an estimated supply elasticity of about 0.3 in States whose initial subsidies were low (not read). Doyle (2007b) studied an Illinois reform that cut the monthly payment to relative caregivers by about 30 percent and found that relatives became 10 to 20 percent less likely to provide care (Journal

of Public Economics). The review by Bald, Doyle, Gross, and Jacob (2022), read in its working-paper version, confirms that foster care supply responds to subsidies and that adoption subsidies raise adoptions relative to long-term care. These are quasi-experimental designs, Grade B for the proposition that price changes the quantity of care supplied. They show that the money paid for substitute care changes how much substitute care is supplied and by whom. They do not measure an effect of IV-E reimbursement on the decision to remove a child, and no study read for this report does.

The second half of the chain concerns what happens to the children at the margin of placement, and here the evidence is mixed in a way this report states plainly. In Illinois, 1990 to 2001, school-age children whose cases could have gone either way, and who were placed because of which investigator drew the case, had higher delinquency, more teen births, and lower earnings than comparable children left at home; Doyle (2007a, pp. 1599 to 1601) concluded that "children on the margin of placement tend to have better outcomes when they remain at home, especially older children," while cautioning that the estimates are large and imprecise. In Michigan, 2008 to 2016, the same design found that placement improved safety and schooling and reduced adult crime, with gains appearing after most children had returned to their parents (Gross & Baron, 2022; Baron & Gross, 2025). These are natural experiments, Grade A for the marginal child in their State and era, and they point in opposite directions because the systems differed: placements in 1990s Illinois were long and unstable, those in recent Michigan short and followed by reunification (Bald et al., 2022). Chapter 8 examines this literature in full. For the financing argument the lesson is precise. A funding design that pays for placement and not for prevention pays for the path whose value depends entirely on the quality and duration of care the State provides afterward, and it does not pay the State to find out which path a given child is on.

That is the analogue. Where the same financing logic has been tested, in foster care, payment levels measurably change the supply of care. Whether the IV-D incentives change custody outcomes in Texas has never been tested, because no one is paid to measure it. Section 5.11 returns to that gap.

5.7 The State's own books on the Department

The Legislative Budget Board's Strategic Fiscal Review of the Department of Family and Protective Services for 2026 supplies findings that no advocate could have written with more authority, because the Board wrote them about the State's own agency.

The 2026 to 2027 appropriations for the Department include $2,047.6 million for direct delivery of child protective services, $1,002.5 million for foster care payments, and $507.6 million for adoption subsidies (LBB Strategic Fiscal Review 2026, ID 9438). The costs of children without placement, children sleeping in offices and hotels because no placement could be found, were met by budget transfers between fiscal years 2022 and 2026 that this report sums to at least $103 million, plus $47 million in supplemental appropriations, a listed total of $150.0 million, with no regular reporting tying that cost to the number of children served (Finding 1, p. 7; the

$103 million is this report's sum of the four transfers listed). The Single Source Continuum Contractors that run Community-Based Care were never required by statute to report their expenditures, and the Legislature cannot confirm how supplemental funding was spent (Finding 3, p. 9). Federal funds are 32.0 percent of the Department's 2026 to 2027 budget, Title IV-E and TANF together 18.5 percent; Family First limits IV-E matching for congregate placements to two weeks, and the Department has lapsed federal funds as a result (Finding 5, pp. 10 to 11).

The words this report uses for these findings are the Board's words: unreported, unclaimed, and unconfirmed. No source read measures waste, and this report does not call the spending wasteful. It is enough that the State's budget office cannot say what $150 million bought, that contractors spending public money on children in State custody were never required to report how they spent it, and that the Department left federal money unclaimed under the program's prevention-era rules. A system that cannot account for its own spending cannot claim that its spending serves the child.

The same Department's figures show where it does not spend. Its Self-Evaluation Report states that a budget rider bars general revenue for lawyers for parents and children in conservatorship suits except by emergency declaration (Self-Evaluation Report, pp. 1 to 49). The counties pay instead, as the next section shows.

5.8 Fee economics: a private market inside a public court

The federal programs pay for the State's side of family litigation. The Family Code arranges for the private side to pay itself, and it gives the people paid the strongest collection remedies the law knows.

The general fee section, amended by H.B. 2524 in the 89th Legislature, provides that in any suit under Title 5 "the court may render judgment for reasonable and necessary attorney's fees, court costs, and expenses and order the judgment and postjudgment interest to be paid directly to an attorney," and that such a judgment "may be enforced in the attorney's name by any means available for the enforcement of a judgment for debt" (Tex. Fam. Code § 106.002(a), (b), as amended by Acts 2025, 89th Leg., ch. 593 (H.B. 2524), eff. Sept. 1, 2025). H.B. 2524 made parallel amendments to the parentage chapter, so that "Attorney's fees awarded by the court may be paid directly to the attorney" and "An attorney who is awarded attorney's fees may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt" (§ 160.636(c)), and to the fee section for amicus attorneys, attorneys ad litem, and guardians ad litem, whose fees the court may determine "are necessaries for the benefit of the child" (§ 107.023(d)). A custody evaluator's "reasonable fee … shall be imposed in the form of a money judgment and paid directly to the person," who "may enforce the judgment for the fee by any means available under law for civil judgments" (§ 107.115). The bill analyses record that the predecessor bill in the 88th Legislature, H.B. 1546, was meant to make the Code's fee provisions consistent; the Legislative Budget Board found no significant fiscal impact to government, and no data on fees or on children were offered with either bill (bill analyses, H.B. 1546 (88th) and H.B. 2524 (89th)). Chapter 9 examines the legislative record on

fee bills under the same standard it applies to every interest, including the author's.

In enforcement, the fee follows the child support remedy. When a court finds that a respondent failed to pay support, it "shall order the respondent to pay the movant's reasonable and necessary attorney's fees, court costs, and expenses in addition to the arrearages," and "Fees, costs, and expenses ordered under this subsection may be enforced by any means available for the enforcement of child support, including contempt" (§ 157.167(a)). Article I, Section 18 of the Texas Constitution says that "No person shall ever be imprisoned for debt." The Supreme Court of Texas permits confinement for unpaid child support on the ground that support is a legal duty and not a debt, a holding Chapter 7 examines. Section 157.167(a) extends the remedy that rests on that holding to the lawyer's fee for collecting the support. The Code instructs that the best interest of the child shall always be the primary consideration, and then lets a fee judgment payable to a lawyer be enforced by contempt, a remedy that the constitutional bar on imprisonment for debt would forbid if the fee were an ordinary debt. No decision read for this report addresses whether confinement may rest on a fee judgment alone.

The structure creates a market with a guaranteed collector. A party who can afford counsel can also be made to pay the other side's counsel, the child's representative, and the evaluator, each through a judgment the payee may enforce directly. A party who cannot afford counsel faces that machinery alone. For the parents the State itself sues, the public money runs out. Texas counties paid $62,100,900 in fiscal year 2024 for attorneys for parents and children in child protection cases, $2.02 per resident, and the State contributed nothing (Texas Indigent Defense Commission, Family Protection Representation data, FY2024; nine county reports were rejected and one was missing). The 89th Legislature passed two bills on appointed counsel in government-filed suits: S.B. 2501, letting an indigent parent choose among qualified appointed attorneys, and S.B. 1838, on the appointment and compensation of attorneys ad litem in such suits. The Legislative Budget Board scored both as having no significant fiscal implication to the State, and both were vetoed on June 22, 2025 (LBB fiscal notes; bill histories). The State's own budget office found the cost of better counsel for parents to be small. The State nonetheless pays nothing toward counsel for the parents it sues, while federal money reimburses part of the cost of the lawyers who sue them (§ 5.5).

What follows is a structural imbalance that no single actor chose and every actor can see. The private side of a custody case is financed by the parties, with collection rights for the professionals that exceed those of ordinary creditors. The public side is financed in part by federal programs that count and pay for orders and collections. The parent's side, when the State is the opponent, is financed by whatever the county can spare. The child, whose relationship with each parent is the subject of the case, finances nothing and is measured by no one.

5.9 The cost of family fragmentation to Texas

The Texas Commission on Marriage and Family exists because the Legislature found "that it is in the best interests of this state to promote lasting marriage and the practice of raising children in

stable, two-parent households" (H.B. 3284, 89th Leg., § 2(1)). A legislature that makes that finding will want to know what the alternative costs. The evidence answers that question in layers, and the first rule of using it is that the layers are never added together.

The rule against summing is not a technicality. Cost estimates in this field measure different things. Some count public assistance paid to households of a given structure. Some count the lifetime cost of a child's maltreatment, including lost quality of life. Some count the health burden attributable to adverse childhood experiences across a population. Some count the return on a particular program. Maltreatment is one kind of adverse childhood experience, so a maltreatment cost and an adverse-experience cost overlap. Several national estimates of the public cost of family fragmentation attribute antipoverty spending to family structure through poverty, so they overlap with estimates of the cost of child poverty. Cost-of-illness studies already include child welfare and criminal justice components, so adding a separate foster care or crime cost counts the same dollars twice. This report therefore presents seven layers, each in its own unit (public aid after family breakdown; the maltreatment burden; the population burden of adverse childhood experiences; removal and system-created costs; family-court process costs; returns on investment; and Texas fiscal baselines) and never states their sum.

The best Texas-specific estimate is the attribution study by Schramm and colleagues (2013). Its authors applied national survey shares of divorced and separated recipients to Texas program spending in fiscal year 2008 across five means-tested areas (medical assistance, cash assistance, food assistance, housing and energy assistance, and child care) and estimated that Texas spent $3,187,201,299 that year on assistance attributed to divorced or separated recipients, of which $2,525,836,270 was federal and $661,365,029 state (Schramm et al., 2013, Table 1, p. 9). The study was supported in part by the Texas Health and Human Services Commission. Its limits are the authors' own: they state that divorce is not shown to cause the assistance, that poverty may cause divorce as well as follow it, and that a cost per divorce cannot be computed from their method. The estimate is an attribution, Grade C for any causal reading, and is reported here as the share of public assistance flowing to households after family breakdown, not as the cost that family breakdown causes. Two cautions about the article itself apply. Its text computes Head Start spending as $81,112,136, while its Table 1 and the arithmetic give $90,714,593; the table total reconciles, so the table is used. And its abstract describes the total as a percentage of the 2008 Texas budget without a denominator that reconciles; that percentage is not used. No independent replication or critique appears among the 48 papers that cite it. The figure the State should hold in mind is the state share, about $661 million a year in 2008 dollars, labeled as an attribution.

The national figures measure other things, and each must be named for what it is. Federal assistance to father-absent households totaled $154.2 billion in fiscal year 2018, across 14 programs (Wildfeuer, Pearson, Hrovat & Brown, 2025, Table 1, p. 18). The report that produced the figure multiplied each program's outlays by the share of participants in single mother-headed households. It is an allocation, not a causal estimate; it includes widowed mothers, 13.3 percent of the sample; it excludes required state matching funds; and it covers one year (Wildfeuer et al., 2025, pp. 10, 15, 28, Table 6). The report was co-published by an advocacy

organization and is Tier 3, Grade C. Within it, federal child support program spending attributed to father-absent households was $2.97 billion. Earlier national estimates, including $112 billion attributed to family fragmentation by Scafidi (2008) and $99.8 billion by Nock and Einholf (2008) for fiscal year 2006, are advocacy estimates that overlap with the 2018 figure in method and programs; they form a chronology of the national estimate, not addends, and this report does not rely on them.

The maltreatment layer carries a different unit. Fang, Brown, Florence, and Mercy (2012) estimated the lifetime cost of a nonfatal case of child maltreatment at $210,012 in 2010 dollars, including childhood and adult health care, productivity losses, child welfare, criminal justice, and special education, and the annual burden of new 2008 cases at $124 billion. Peterson, Florence, and Klevens (2018) estimated $830,928 per nonfatal victim in 2015 dollars and a 2015 burden of $428 billion on substantiated cases. The two figures are not comparable. Of Peterson's $830,928, $760,000, about 91.5 percent, is a monetized loss of quality of life that replaced the productivity term used in 2012; the spending components total $70,928 (computed from the components reported). The larger figure reflects a change in method, not a change in harm, and it is a societal-cost model, not a budget figure. Both studies are Grade C cost-of-illness models, and neither concerns divorce or custody. They belong to the State's child protection system, which Chapter 8 examines, and they measure the ceiling of the range in which lesser injuries to children sit.

The population layer is larger still and more diffuse. Bellis and colleagues (2019) estimated annual costs attributable to adverse childhood experiences of $748 billion in North America, 3.55 percent of gross domestic product, with 82 percent of that cost falling on people with two or more such experiences, and estimated that a 10 percent reduction in their prevalence would be worth about 3 million disability-adjusted life years or $105 billion a year. The design rests on observational prevalence and attribution, and the figure is a human-capital estimate, not a cash cost to any government. Its policy content lies in the concentration: most of the burden sits with children who experience several adversities, which is why a system that adds avoidable adversities to children already experiencing one is a fiscal question as well as a moral one.

The individual layer gives the most concrete measures. In a prospective cohort with matched controls, adults whose childhood abuse or neglect had been documented by a court in 1967 to 1971 had lower education, employment, earnings, and assets at a mean age of 41, including a 14 percentage point gap in the probability of employment after background controls (Currie & Widom, 2010; a later review reports a larger gap). Cohen and Piquero (2009) estimated the present value of saving one high-risk 14-year-old from a life of crime at $2.6 million to $5.3 million. These are scenario values for high-risk youth, not predictions for an average child.

What the layers establish together, without adding them, is a pattern a legislator can rely on. Public money already follows family breakdown in Texas on a scale measured in hundreds of millions of state dollars a year. The cost of harm to a child, when harm occurs, is measured in hundreds of thousands of dollars per child. And the burden of adversity concentrates in children who suffer several kinds at once. What the layers do not establish is how much any proposed reform would save. No benefit-cost study of custody-law reform, evaluator standards, or

divorce-law reform, in Texas or elsewhere, was found in the searches made for this report, and this report states no savings forecast for its own proposals.

5.10 What prevention returns

The evidence on returns comes from programs, not from law reform, and it distinguishes programs that work from programs that share their names.

The Washington State Institute for Public Policy, using meta-analysis and a common benefit-cost model in 2023 dollars, reports the following results per participant for programs relevant to the child welfare system. The Institute's own caveat applies: "The benefit-cost estimates pertain specifically to Washington State; results will vary from state to state."

Program	Benefits minus costs	Benefit per dollar	Chance benefits exceed costs
Parent-Child Interaction Therapy, child welfare families	$32,936	$17.46	95%
SafeCare	$5,211	$24.05	94%
Intensive Family Preservation Services (HOMEBUILDERS)	$17,651	$5.14	97%
Child-Parent Psychotherapy	$77,733	$15.63	96%
Nurse Family Partnership	$6,920	$1.48	65%
Other family preservation (non-HOMEBUILDERS)	($10,012)	($1.56)	0%
Family dependency treatment court	($15,242)	($1.26)	9%

Source: Washington State Institute for Public Policy, Benefit-Cost Results (methods updated December 2024; 2023 dollars). Several rows rest on one or two studies; the Parent-Child Interaction Therapy child welfare estimate rests on two studies with 78 participants.

The table carries its own counterevidence. Two programs that sound like prevention lose money in the Institute's model, with chances of breaking even of 9 percent and zero. The case for prevention is therefore a case for named, tested programs, not for spending under a heading. The same principle governs Family First, which reimburses only Clearinghouse-rated services, and it is the principle this report asks Texas to apply to everything it funds in family law: money follows measured results.

The strongest long-run evidence on returns to early investment in children comes from the Carolina Abecedarian and CARE programs, randomized in the 1970s and followed to the mid-thirties, for which García, Heckman, Ermini Leaf, and Prados (2020) estimated an internal rate of

return of 13.7 percent a year and a benefit-cost ratio of 7.3. Part of the benefit is modeled beyond the observed years, the program was more expensive than most early-childhood programs, and it concerns early education, not custody law. What it shows is that sustained investment in the quality of a young child's care can return several times its cost, measured by economists over decades. It does not attach a rate of return to any bill in this report, and none is claimed.

5.11 The objection that there is no evidence

The strongest objection to this chapter comes from the agencies and their staffs, and it should be stated in its strongest form. There is no evidence that Title IV-D financing distorts custody outcomes in Texas.

That is correct, and this report says so first. No published study read for this report shows that the IV-D incentives, the IV-D bench, or the fee provisions change who receives conservatorship, how much time a child spends with each parent, or how often a parent is reduced to a visitor. The structure is documented: the measures in 45 C.F.R. § 305.2, the open match, the exclusion of parenting-time costs from reimbursement, the maximization directive in Family Code § 201.107(c), and the funding of the IV-D associate judges through pass-through money. The analogue is tested: in foster care, payment levels change the supply of care (Doyle & Peters, 2007; Doyle, 2007b; Bald et al., 2022). The effect on custody is not measured.

The objection proves less than it claims. It is not evidence that the structure has no effect; it is evidence that no one has looked. The State's records could answer the question. No public Texas dataset reports conservatorship or possession outcomes by parent, by whether the order was agreed or contested, or by court (Chapter 4). The Office of Court Administration reports family cases by type and disposition, and Government Code § 72.083(b) requires court-by-court reporting only of clearance rates, time to disposition, and the age of pending cases. The Attorney General's incentive receipts, the county contracts under § 231.002, the IV-D associate judges' dockets, and the share of orders entered by default or on imputed income are all held by public bodies.

A system that is confident its financing is neutral should welcome the measurement. The proper response to "there is no evidence" is to require the evidence, and the recommendations below do.

The second objection is the agency's efficiency case: the program collected nearly $4.3 billion in federal fiscal year 2025, and the Attorney General reports that its work allowed taxpayers to avoid more than $1.5 billion in public assistance and Medicaid costs in fiscal year 2024 (OAG LAR FY2028-29). This report concedes both figures from the agency's own filings. The program is efficient at what it measures. Its measures do not include the child's relationship with either parent. Efficiency at the wrong objective is not a defense of the objective.

5.12 Recommendations

The recommendations below are a measurement and disclosure package. They require no

finding of fault by anyone and change no federal condition. They change what the State measures and publishes, and they make repeal of the maximization directive the conditional step if the measurement shows an effect.

- Require the Office of the Attorney General and the Office of Court Administration to report to the Legislature annually, by county and by court, for every Title IV-D order: whether it was entered by default, on imputed income, by agreement, or after a hearing on actual earnings; the possession schedule in effect; and the paying parent's income after the obligation. The guideline review that federal law already requires, which must analyze "the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level" and compare payments on default and imputed orders (45 C.F.R. § 302.56(h)(1), (2)), supplies the template.
- Publish every payment between the Title IV-D agency and any county, court, regional presiding judge, contractor, or vendor, notwithstanding the exemption in § 231.002, with incentive receipts and their uses stated by year.
- Impose a duty to account: the presiding judges and the agency shall report the federal funds received for the IV-D courts and the outcomes of the cases those courts decide, and the Legislature shall require a measured review of whether the maximization directive in § 201.107(c) is associated with differences in default orders, imputed income, or conservatorship rulings. If the measurement shows an effect, repeal § 201.107(c) and move the funding of any court that hears conservatorship to the State level, so that no court deciding a child's custody depends on contracts with a litigant before it.
- Fund counsel for parents in government-filed suits from state revenue, beginning at the cost the Legislative Budget Board already scored as insignificant, and repeal the rider that bars general revenue for that purpose.
- Bar the enforcement of any attorney's, ad litem's, or evaluator's fee by contempt, and limit such fees to the remedies of an ordinary judgment creditor.
- Require the Department of Family and Protective Services and every Single Source Continuum Contractor to report expenditures by child and by outcome, and require reporting of the cost of children without placement tied to the number of children served.
- Condition state discretionary money for family-court programs, trainings, and contracts on outcome measurement against a validated instrument or a hard administrative outcome, applying the same standard Family First already applies to federal prevention money.
- Adopt a concurrent resolution asking Congress to add a measure of the child's relationship with each parent to 42 U.S.C. § 658a and 45 C.F.R. § 305.2, and to make the establishment of parenting time a reimbursable IV-D administrative cost.

5.13 What follows

The money establishes what the federal measures count and pay for: orders, collections, and placements, while the child's relationship with each parent is neither counted nor paid. Chapter 6 turns from the financing of decisions to the decisions themselves, the custody evaluations, allegations, and ex parte orders through which a court decides which parent a child will keep. The question there is the same one this chapter asked of the money: what is measured, by what standard, and with what evidence that the measurement serves the child. # Chapter 6. The Decisions

The preceding chapters established three things about the system that decides where a Texas child lives and how often the child sees each parent. The Code states its governing standard, the best interest of the child, and leaves it undefined (Chapter 3). The courts apply that standard through temporary orders, referrals, and records that leave little for any higher court to review (Chapter 4). And the money that runs through the system is counted by measures of case activity, not by whether a child keeps a relationship with each fit parent (Chapter 5). This chapter turns from the structure to the instruments by which individual decisions are actually made: the court-ordered custody evaluation, the allegation of abuse, the ex parte protective order, and the two bodies of evidence most often offered to explain conflict between parents, the research on partner violence and the research on parental alienation.

The question put to each instrument is the same. What does it measure, how well has that measurement been validated, and what does the Code let a court do with the result? Chapter 1 adopted the three-part test of Mathews v. Eldridge, 424 U.S. 319 (1976), as one of the report's lenses: the private interest at stake, the risk of an erroneous deprivation under the procedures used and the value of additional safeguards, and the government's interest, including its burden. The private interest here is the one the Texas Constitution now names in terms, the "fundamental right to exercise care, custody, and control" of one's child (Tex. Const. art. I, § 37). The answer this chapter reaches is consistent across all four instruments. In each, the Code permits a consequential restriction of a parent's relationship with a child on a method that has not been validated for that purpose, under a standard of proof well below the interest at stake, and with safeguards the State already uses elsewhere left out. Family Code text is quoted as rendered Dec. 13, 2025; Penal Code text as rendered Apr. 10, 2026; federal statutes from the 2024 edition of the United States Code.

6.1 Custody evaluations

6.1.1 What the statute requires

Texas defines a child custody evaluation as "an evaluative process ordered by a court in a contested case through which information, opinions, recommendations, and answers to specific questions asked by the court may be" made regarding conservatorship, possession and access, or "any other issue affecting the best interest of a child" (Tex. Fam. Code § 107.101(1)). The evaluation is therefore not a fact-finding by the court. It is an opinion offered to the court, and

in a system where 109 of 282,099 family cases disposed by the district courts in fiscal year 2025 were decided by a jury (Office of Court Administration, District Courts Activity Detail FY 2025, pp. 6 to 7), the person who receives that opinion is almost always a single judge deciding alone. Whatever the evaluator measures, and however well, is likely to be the most structured evidence the judge sees.

The Code qualifies the evaluator by degree field, license, and supervised experience. An evaluator must hold "at least a master's degree from an accredited college or university in a human services field of study" and a Texas license as a social worker, professional counselor, marriage and family therapist, or psychologist, or be a licensed physician board-certified in psychiatry; must complete two years of supervised full-time experience; and must have performed at least ten court-ordered evaluations under supervision (Tex. Fam. Code § 107.104(b)(1)). The Code defines a "human services field of study" as one "designed to prepare an individual in the disciplined application of counseling, family therapy, psychology, or social work values, principles, and methods" (§ 107.104(a)(2)). A doctoral-level licensee may qualify instead on coursework and practice experience "satisfactory to the licensing agency that issues the individual's license" (§ 107.104(c)). Every evaluator must complete eight hours of family violence dynamics training "provided by a family violence service provider" (§ 107.104(e)). In 2025 the Legislature added a requirement of three hours of training, within the two years before the evaluation, on the care of a child with an intellectual or developmental disability (§ 107.104(f), added by H.B. 2340, 89th Leg., R.S., which applies the requirement to evaluators appointed on or after January 1, 2026), and it barred a court from admitting the report of an evaluator who lacks that training when the child has such a disability (§ 107.114(a-1)). In counties under 500,000 population on or near the Gulf coast and the border, a court that finds no qualified evaluator available may appoint an individual it "determines to be otherwise qualified" (§ 107.106(a-1)).

No subsection of § 107.104 requires training in measurement, research design, statistics, inference, or any validated method of assessing the relationship between a parent and a child. The omission is not an oversight of drafting history. The 2025 amendment shows that the Legislature knows how to attach a specific training requirement to the qualification and to enforce it through admissibility. It has done so for family violence dynamics and for developmental disability. It has not done so for the one competence every evaluation draws on, which is the ability to measure something and know how far the measurement can be trusted. The criticism here is of what § 107.104 lists, not of licensed evaluators, who qualify under the statute as the Legislature wrote it.

The statute then requires the evaluator to do exactly that. Section 107.108(c) provides that a child custody evaluator "shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations." Section 107.108(f) requires the report to state "the extent to which information obtained limits the reliability and validity of the opinion." Among the basic elements every evaluation must include is "assessment of the relationship between each child who is the subject of the suit and each party seeking possession of or access to the child" (§ 107.109(c)(7)), and an evaluator "may not offer an

opinion regarding conservatorship" until each basic element is completed or its omission is explained (§ 107.109(a)). The Code names no method for the relationship assessment and sets no standard for what counts as evidence-based. Psychometric testing is ordered by the court or undertaken when "determined necessary by the child custody evaluator," and the selection of a specific test "is at the professional discretion of the child custody evaluator based on the specific issues raised in the suit" (§ 107.110(a)(1), (b)). The evaluator's conduct must conform "with the professional standard of care applicable to the evaluator's licensure" and the licensing authority's rules (§ 107.108(a)). The statute orders a measurement of the parent-child relationship, demands that it be evidence-based, requires the evaluator to report its reliability and validity, and then hands the choice of ruler to whoever holds the license.

The statute's other provisions fill in the economics and the accountability of the office. A prospective evaluator must disclose any conflict, prior knowledge of a party, or "pecuniary relationship" or "relationship of confidence or trust" with an attorney in the suit (§ 107.107(a)). A court may not appoint a person who makes such a disclosure unless it finds none of them disqualifying, or unless "the parties and any attorney for a child who is the subject of the suit agree in writing to the person's appointment" (§ 107.107(b)(2)); the same waiver by written agreement applies to an evaluator who discovers a conflict after appointment (§ 107.107(d)(2)). An evaluator who has conducted one evaluation in a suit "may conduct all subsequent evaluations in the suit unless the court finds that the evaluator is biased" (§ 107.107(e)). The evaluator's fee is imposed "in the form of a money judgment and paid directly to the person," enforceable "by any means available under law for civil judgments" (§ 107.115). Since 2023 the evaluator must make an audiovisual recording of each interview with a child (§ 107.112(b-1), added by H.B. 4062, 88th Leg.), but interviews with the parents and observations require only "a detailed record" kept under the rules of the evaluator's license (§ 107.112(b)). And the evaluator "is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given" in that capacity, except for conduct with "conscious indifference or reckless disregard to the safety of another," "in bad faith or with malice," or that is "grossly negligent or wilfully wrongful" (§ 107.009(a), (b)), a provision the Legislature amended in 2005, 2017, and again in 2025 (H.B. 2530, 89th Leg.). The office is thus paid by judgment, shielded by statute, staffed by license, and free to choose its own instruments. Chapter 10 takes up the immunity. This section takes up the instruments.

6.1.2 How evaluators are trained and what they use

The best available record of evaluator practice is national, consists of surveys, and is drawn mainly from psychologists, who are one of five licensed groups eligible to serve in Texas. No survey of Texas evaluators was found. With that limit stated, the record is consistent. Bow and Quinnell (2001), surveying psychologists who perform custody evaluations, found that their custody training came overwhelmingly from seminars, an average of 8.7 seminars with a range of 1 to 75; about 44 percent had obtained supervision, 39 percent had internship or postdoctoral training in the work, and few had taken graduate forensic coursework. Bow, Gould, Flens and Greenhut (2006), surveying 89 psychologists, found that only a limited number of the

tests used in custody work were endorsed as meeting the Daubert standard for scientific reliability, and that evaluators placed less emphasis on generating and testing hypotheses. Ackerman and Brey Pritzl (2011), in a twenty-year follow-up of 213 experienced evaluators, reported that the instruments administered to parents were dominated by personality and psychopathology measures: the MMPI-2 in 97.2 percent of evaluations, the MCMI in 71.3 percent (up from 34.3 percent), intelligence testing in 65.5 percent, the Rorschach in about half, and the PAI in 28 percent. None of those instruments is designed to measure the attachment relationship between a parent and a child; that is a reading of what each instrument is built to measure, not a finding the authors tested. The authors themselves reported that respondents had virtually no formal academic training in custody evaluation. These are survey data (Grade C), and they describe the practices of psychologists, the most research-trained of the eligible professions.

The field's own reviewers reached the same conclusion from the other direction. Byrne, O'Connor, Marvin and Whelan (2005) argued that custody assessment had not met the evidence-based standard applied in clinical practice, and that validated measures of attachment were available. Emery, Otto and O'Donohue (2005), in a review titled "A critical assessment of child custody evaluations: Limited science and a flawed system," argued that the best-interest standard is vague and urged clearer rules; that article is read at the level of its abstract and published descriptions, and the report relies on it only for its stated thesis. The one study that measured the professional mix of evaluators, a national survey funded by the National Institute of Justice, found 52 percent psychologists, 24 percent social workers, 7 percent counselors, and 6 percent marriage and family therapists among responding evaluators, and found that recommendations differed by discipline (Saunders, Faller & Tolman, 2011). That study's limits are taken up in Section 6.2; its count of who does the work is not in dispute.

The profession's own standard does not close the gap, and does not claim to. The Association of Family and Conciliation Courts replaced its 2007 Model Standards with Guidelines approved by its Board on May 11, 2022, and states that the Guidelines are not meant to define mandatory practice; they carry no enforcement mechanism. Their floor is a master's degree in a mental health field (AFCC, 2022, § 1.2(a)). They state that more instruments or interviews do not necessarily yield more reliable or valid information (§ 6.3(b)), ask evaluators only to consider recording (§ 5.2(c)), and prefer instruments normed on custody litigants (§ 10.3(a)). The Texas statute, for its part, measures the evaluator's conduct against the standard of care of whichever license the evaluator holds (Tex. Fam. Code § 107.108(a)). What follows is that no binding text in Texas, statutory or professional, requires that the relationship assessment the Code mandates be carried out with an instrument validated for that construct.

6.1.3 What attachment science offers, and what its leading researchers caution

Chapter 2 set out the developmental evidence. Two instruments matter here. The Adult Attachment Interview (AAI), coded under the system of Main, Goldwyn and Hesse (2003), assesses an adult's state of mind with respect to attachment. In the foundational meta-analysis, AAI classification predicted the infant's attachment classification across 18 samples (N = 854)

with a combined effect size of 1.06 and 75 percent correspondence, and predicted parental responsiveness across 10 samples (van IJzendoorn, 1995). Later syntheses report smaller pooled associations: r = .31 for the secure-autonomous classification and .21 for the unresolved classification across 95 samples (Verhage et al., 2016), and r = .29 across 58 studies, weaker in samples at risk (Verhage et al., 2018). All three figures belong in any honest account. Classification is stable: 78 percent agreement on three categories over two months (Bakermans-Kranenburg & van IJzendoorn, 1993) and 90 percent over three months in a sample of high-ability students (Sagi et al., 1994), with the unresolved category less stable. The observer-coded Attachment Q-Sort (AQS; Waters, 1995, with the criteria of Pederson & Moran, 1995) assesses a young child's secure-base behavior with a caregiver. Across 139 studies and 13,835 children, the observer AQS converged with Strange Situation security (r = .31) and predicted caregiver sensitivity (r = .39), and the self-report version did not perform as a valid measure (van IJzendoorn et al., 2004). Its validity is stronger where observation exceeds 180 minutes (r = .39 with Strange Situation security; r = .44 with sensitivity; Cadman, Diamond & Fearon, 2018). These are Grade A meta-analytic findings about groups. They establish that the instruments measure the construct at the level of populations. They do not, by themselves, establish what a single classification means for a single child in a contested case.

The researchers who built the field have addressed custody use directly, and the report must engage both of their principal statements by name. Main, Hesse and Hesse (2011) describe the Strange Situation, the AQS, and the AAI as the methods that come closest to providing scientific evidence about an individual's current attachment status, endorse their use in family law, and strongly encourage evaluators to train and become certified. In the same article they caution that classifications produced by uncertified or untrained coders, by procedures that merely resemble the Strange Situation or the AAI, or by self-devised systems do not carry the validity established in the meta-analyses; that validation for custody contexts is still developing; that meta-analyses on father-child relationships are needed; and that the stress of litigation may distort results. Their endorsement and their caution describe one standard: validated measures, administered and scored by certified coders, with the limits of the custody context stated.

The 2022 international consensus statement, Attachment goes to court (Forslund et al., 2022), goes further in the cautionary direction. It holds that children form multiple attachments; that assessments of caregiver behavior should take center stage in child protection and custody work; that attachment-quality assessments are most suitable for informing supportive interventions; and that using attachment assessments to allocate custody time is ill-advised. It gives reasons: it is not known whether children benefit from more time with the parent with whom they are more securely attached; the validity of the assessments during custody disputes is unknown; and insecurity is a probabilistic risk factor, not a pathology. It states that current measures have limited sensitivity and specificity for predicting an individual child's development and that many insecurely attached children develop favorably, and that validity shown at the level of groups does not transfer automatically to individual cases (pp. 14 to 15, 29 to 30). The same statement acknowledges that validated assessments by trained, certified coders can improve prediction above chance and that many other instruments in use have lower or

unknown predictive validity (p. 15). It lists, among open research questions, whether multiple assessments have higher predictive value than one (§ 6.2). It also records that its authors did not all agree on the use of attachment-quality assessments in custody and child-protection decisions. This is an expert consensus with stated dissensus (Grade D as evidence), written by researchers whose primary studies the report relies on elsewhere. It deserves to be answered on its terms.

6.1.4 The author's departure, stated plainly

The Standard Protocol Evaluation proposed below uses validated attachment measures as one input to the court's findings in contested custody decisions. It does not use them as a basis for dividing time. To the extent that an input to findings in a decision that allocates parenting time still departs from the conclusion of Forslund et al. (2022) that using attachment assessments to allocate custody time is ill-advised, the point is contested, and the report marks it as contested. The statement's reasons rest on cited research and on a stated absence of evidence, and nothing in this report claims those reasons lack scientific support. The author's argument for the departure has four parts.

First, for the construct the statute already requires evaluators to assess, the relationship between each child and each parent (Tex. Fam. Code § 107.109(c)(7)), the AAI and the observer AQS are the best-validated instruments available. They are validated as attachment measures; they are not validated as a basis for dividing time, and the protocol does not use them for that. Main, Hesse and Hesse (2011) say so in terms, and the consensus statement concedes that certified coding improves prediction above chance (Forslund et al., 2022, p. 15). The question before the Legislature is not whether these measures are perfect. It is which method will be used to perform an assessment the Code has made mandatory.

Second, the instruments in routine use are less validated for that construct, not more. Personality and psychopathology inventories dominate the practice record (Ackerman & Brey Pritzl, 2011); only a limited number of the tests evaluators use were endorsed as meeting Daubert (Bow et al., 2006); and the consensus statement itself says many other instruments have lower or unknown predictive validity (Forslund et al., 2022, p. 15). The realistic comparison is between validated attachment measures scored by certified coders and an unstandardized interview and observation interpreted by an evaluator whose training, on the national record, came mostly from seminars.

Third, the stated risks have safeguards, and the protocol builds them in. The measures are one input beside direct assessment of caregiving and never a verdict. No insecure classification is treated as evidence of unfitness, because the research is clear that insecurity is a probabilistic risk factor and that many insecurely attached children develop favorably. Coders are certified and blind to the allegations. Every session is recorded. Every party may have the raw data reviewed. The evaluator writes a descriptive report of what was observed and scored and makes no ultimate recommendation on conservatorship or possession. Every report states that the instruments are not normed on custody litigants and that litigation stress may affect results, which is the caution both the AFCC Guidelines (§ 10.3(a)) and Main, Hesse and Hesse (2011)

supply.

Fourth, the statement's own authors disagree. Forslund et al. (2022) record dissensus among their number on precisely this use. In the companion introduction, Thompson, Simpson and Berlin (2022) describe a project in which more than 75 researchers addressed nine fundamental questions and report surprising diversity of views on key questions. A conclusion its own authors did not reach unanimously is a reason for caution, which the protocol supplies, not a reason to leave the Code's mandated relationship assessment to unvalidated methods.

Two limits remain and are stated. No study read shows that awarding more time to the parent with whom a child is more securely attached improves the child's outcomes; that is the consensus statement's central reason, and it is correct as a description of the literature. The report's own recommendation does not rest on such a study. Under the equal-parenting presumption the author recommends for fit parents (Chapters 3 and 12), the measures are not used to rank parents for a larger share of time. They inform the court about each parent's caregiving, flag concerns that warrant support or further inquiry, and replace the unvalidated impressions that now fill the same space. The second limit is that no study read validates scoring the AQS from video recordings, and the recording requirement is justified by accountability, not by a validation study.

6.1.5 The Standard Protocol Evaluation

The author recommends that, in a contested suit, which means a suit with no signed agreed order on conservatorship and possession, a court-ordered evaluation consist of the following components and nothing else. Agreed cases need no evaluation.

Component	Who and how	Condition
One Adult Attachment Interview per parent	Administered by an independent interviewer; the transcript is de-identified and scored by a reliability-certified coder who has no case information and no knowledge of the allegations	Every contested case
One observer-coded Attachment Q-Sort per child aged one to five (by developmental age) with each parent	A qualified observer; at least three hours of observation, which may be split across sessions; every session recorded; scored under the manual; rescored from the recording by a second qualified observer on any challenge	Every contested case with a child in the age range
One validated personality and psychopathology inventory (the MMPI-3 or its successor)	A qualified examiner	Only on an articulated concern supported by evidence of mental illness

Component	Who and how	Condition
One standardized intelligence test	A qualified examiner	Only on an articulated concern supported by evidence of impairment

Source: the author's recommendation; instrument validity as stated in Section 6.1.3.

The scores and a descriptive report of what was observed go to the court. The evaluator's ultimate recommendation on conservatorship or possession is eliminated, which goes further than the profession's own text, since the AFCC Guidelines limit only interim recommendations (§ 4.5). The statute states criteria (validated, scored under the published manual, reliability-certified, blind) and lists the AAI and the observer AQS only in a non-exclusive note, not in the operative text; it names no product and no provider.

Six safeguards complete the design. Appointees are assigned at random from a state-certified pool, with an annual cap on assignments per court and disclosure of every prior dealing with counsel. The waiver of a disclosed conflict by written agreement in § 107.107(b)(2) and (d)(2) is repealed, because a conflict the parties may waive under pressure of litigation is a conflict the statute has chosen to tolerate. Every interview and observation is recorded and preserved. Any qualified reviewer chosen by any party, licensed or not, may examine the full file and all raw data without a showing of good cause. A successive full evaluation may be ordered only on a written finding of good cause. And after a sunset date set 24 months after enactment, no court may order or admit a custody evaluation unless every person who administered or scored a component meets the qualification gate.

A statutory bar applies to everyone, including the author: no person who sells training, coding, scoring, or administration services for an approved instrument, or who holds a financial interest in one, may serve as an appointee, vendor, or pool administrator under this section.

The gate is stated as competencies, not credentials. An observer, interviewer, scorer, or appointee must show, by transcript or equivalent record filed with the order, graduate-level competence in measurement and research methods, including statistics, research design, and supervised research; graduate-level competence in child development, family systems, attachment, or empirical developmental research; and reliability certification on any attachment measure administered or scored, to the instrument's published reliability standard. A graduate degree in child development, human development, human development and family sciences, or developmental psychology with a completed thesis or dissertation satisfies the first two; so does an equivalent degree, and so does a license from a Texas licensing board held together with the competencies and the reliability certification. Evaluators serving on the date of enactment may continue through the sunset period. Accreditation by the American Psychological Association is not the gate, because that body accredits programs in health service practice, and no developmental or child development program falls within its scope. The competencies are drafting defaults; no study read shows that any particular threshold is optimal.

Two objections deserve direct answers. The first is supply. No public count of certified AAI

coders exists, and certification requires a training institute followed by an extended period of reliability testing; a competing coding system exists with its own court protocol. The pool's size is therefore unknown, and the 24-month sunset and the vendor-neutral criteria are the answer the author proposes, not a proof that the pool will suffice. The statute should also require the pool administrator to publish each year a count of qualified persons and require open-access reliability training, so that the pool cannot be closed to new entrants. The second is that the gate excludes professions. It is written in terms of what a person has been trained to do, and it excludes no degree title that carries the training. That a counseling-track degree does not normally carry a research thesis is a fact about those programs, not a purpose of the statute.

The author's interest must be disclosed again here, in the place where it matters most. Dr. McKenzie completed and passed the full 30-case reliability test for analysis of the Adult Attachment Interview on January 2, 2009, certified by Mary Main and Erik Hesse of the Department of Psychology at the University of California, Berkeley, and was found reliable in both three-category and four-category analysis. He is not a licensed psychologist and offers no diagnosis or treatment. He provides AAI coding, AQS administration, and Trust-Based Relational Intervention training commercially. The statutory bar recommended above applies to him as it applies to everyone: he could not serve as an appointee, vendor, or pool administrator under the statute he recommends, and he will not seek to. Any qualified reviewer may examine evaluators' work. The recommendation is drafted as a vendor-neutral standard so that it can be judged without regard to who proposes it. On cost, the author states from his professional experience that contested custody evaluations at the high end currently cost tens of thousands of dollars; no court record of evaluator fees was obtained, and no figure is offered.

6.1.6 Repetitive evaluations

The Senate Committee on State Affairs was charged to identify "inefficiencies in these proceedings that result in unpredictable timelines, unnecessary delays, repetitive child evaluations, or other needless complications," and to make "recommendations to ensure Texas families have access to fair and consistent procedures in family courts and truly prioritize the best interests of children" (Senate Committee on State Affairs, Interim Charge, Protecting Texas Families, heard Sept. 14, 2026). The Code places no limit on the number of evaluations in a suit. Its one provision on the subject assumes they will recur: an evaluator who has conducted one evaluation "may conduct all subsequent evaluations in the suit unless the court finds that the evaluator is biased" (Tex. Fam. Code § 107.107(e)). Each evaluation must include interviews of every child aged four or older during each party's possession and observation of every child with each party (§ 107.109(c)(2), (3)), so each repetition is a repetition for the child.

No study in the record shows that repeating a full custody evaluation improves its validity. That is a statement about the absence of evidence, and the report labels it as such. The consensus statement lists the predictive value of multiple assessments as an open question (Forslund et al., 2022, § 6.2), and the AFCC Guidelines state that more instruments or interviews do not necessarily yield more reliable or valid information (§ 6.3(b)). There is some reason for concern that repetition changes what is being measured. In a low-risk Swedish sample, prior

participation in the Strange Situation was linked to higher child distress at a second session and, where the procedure overstressed the child, to more disorganized classifications (Granqvist et al., 2016; Grade C). That is one sample and a child procedure other than those proposed here, and it shows only that a child is not an inert instrument who can be measured again without effect.

What follows is a design, not a prohibition. The usual argument for a second evaluation is that it protects a parent against a flawed first one. The Standard Protocol supplies that protection without a second intrusion on the child: every session is recorded, every party may have the raw data reviewed by a qualified reviewer of its choice, and a second certified observer rescores the recording on challenge. A successive full evaluation remains available on a written finding of good cause. The Committee asked for fewer repetitive child evaluations and more consistent procedures. A fixed battery, scored blind, recorded, and open to review, answers both requests at once, and the current statute answers neither.

6.2 Allegations of abuse

6.2.1 What the Code lets an allegation do

An allegation of abuse acts on a custody case long before any court decides whether it is true. The evaluator must obtain the Department of Family and Protective Services' investigative records on every person in the household (Tex. Fam. Code §§ 107.109(c)(5)(C), 107.111(a)) and must consider "any contact with the department or a law enforcement agency regarding abuse or neglect" (§ 107.109(c)(6)). The conservatorship statutes then attach consequences at three different thresholds. The court "may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse," and it is a rebuttable presumption that appointing that parent as sole managing conservator or as the conservator who designates the child's residence is not in the child's best interest "if credible evidence is presented" of such a history (§ 153.004(b)). It is likewise a rebuttable presumption against unsupervised visitation "if credible evidence is presented of a history or pattern of past or present child neglect or abuse or family violence" (§ 153.004(e)). The court "may not allow a parent to have access to a child" where "it is shown by a preponderance of the evidence" that the parent has a history or pattern of committing family violence during the two years before filing or while the suit is pending, unless it makes the findings and protective provisions of subsection (d-1) (§ 153.004(d), (d-1)). And under § 153.131(b), "A finding of a history of family violence involving the parents of a child removes the presumption" that joint managing conservatorship is in the child's best interest.

The phrase "credible evidence," on which the most consequential of these rules turns, appears in the stored text of the Family Code in four sections (§§ 153.004, 153.010, 153.501, 153.502) and is defined in none of them. The Code's general rule is that findings "shall be based on a preponderance of the evidence" (§ 105.005), but a rule triggered when credible evidence "is presented" does not, by its terms, require a finding at all. The parental presumption that Chapter 3 described therefore yields not to proof but to the presentation of evidence a judge

regards as believable. A presumption that gives way on presentation is a presumption in name only.

The stakes of that design depend on one empirical question: can the forum tell a true allegation from a false one? The evidence on that question is now examined at the source.

6.2.2 What the evidence on allegations shows

The most cited study is also the most often misstated. Trocmé and Bala (2005) analyzed 7,672 child-welfare investigations from Canada's national incidence study. Caseworkers judged 4 percent of all investigations intentionally fabricated, and 12 percent of investigations where a custody or access dispute was ongoing. More than a third of all investigations were unsubstantiated, which is not the same thing as false, and most unsubstantiated reports were made in good faith. Among intentionally false reports in custody disputes for which the source was recorded, the reporters were distributed as the table shows. Neglect, not abuse, was the type of maltreatment most often fabricated.

Source of intentionally false reports in custody or access disputes	Share
Noncustodial parents	43 percent
Relatives, neighbors, and acquaintances	19 percent
Custodial parents	14 percent
Children	2 percent

Source: Trocmé and Bala (2005), Table 6 (unweighted; 283 intentionally false allegations with source data). The shares describe intentionally false reports within the custody-dispute subsample only, not all false reports in the study, and the categories shown do not exhaust the sources. Caseworker judgment, not adjudication; custody status not checked against court records; investigations conducted by police alone excluded.

The next national cycle pointed the same way: 4 percent of investigations were judged intentionally false overall and 14 percent where a custody dispute was ongoing, and among 69 sexual-abuse allegations in custody disputes, 11 percent were substantiated, 34 percent suspected, 36 percent unsubstantiated but made in good faith, and 18 percent intentionally false (Bala, Mitnick, Trocmé & Houston, 2007). A later Canadian analysis reported about 25 percent "malicious referral" in custody-dispute investigations against 12 percent without, as summarized by Saini, Laajasalo and Platt (2020); its definition differs from the earlier cycles and the article itself was not opened, so it marks the high end of the range without fixing it. These are administrative samples judged by caseworkers (Grade C).

The range, stated once: in the Canadian caseworker data, intentional fabrication was judged to account for 12 percent of investigations in custody disputes in the first national cycle and 14 percent in the next, against 4 percent of investigations overall in each, and for about 25 percent in a later analysis that defines the category differently. Among sexual-abuse allegations in custody disputes, 11 percent were substantiated, 34 percent suspected, 36 percent unsubstantiated but made in good faith, and 18 percent intentionally false. Every one of these is

a caseworker judgment, not an adjudication, and none is a rate that the reviewers accept as established.

Studies inside the family court reach a compatible result. In a clinical sample of 120 custody-disputing families, allegations were raised in most cases, about half of all allegations had some substantiation, and allegations against mothers and against fathers were substantiated at virtually the same rates, 52 and 51 percent; both parents made allegations in 49 percent of families, and both were substantiated in 24 percent (Johnston, Lee, Olesen & Walters, 2005; Grade C, nonrandom sample). An earlier multi-court study, as summarized by Justice Canada, found sexual-abuse allegations in 1.9 percent of more than 9,000 disputing families, about half of which were believed to involve abuse (Thoennes & Tjaden, 1990). Timing alone does not discredit a report: in one clinical series of sexual-abuse cases judged probably true, divorce preceded the discovery of earlier abuse in 38 percent and preceded new abuse in 40 percent (Faller and DeVoe, as reported by the University of Michigan; secondary, Grade D).

The reviewers who have tried to establish a rate say it cannot yet be done. O'Donohue, Cummings and Willis (2018), reviewing the literature on false allegations of child sexual abuse, conclude that the actual rate is unknown, because studies rely on invalid criteria for deciding what is true, draw unrepresentative samples, and ignore context such as the stage at which an allegation was made; they also conclude that most allegations are true and that false allegations occur at a rate that is not negligible. Saini, Laajasalo and Platt (2020), a narrative review, argue against treating custody cases as a binary contest between abuse and alienation, and recommend early screening, structured investigation that tests multiple hypotheses, and the NICHD forensic interview protocol to guard against confirmation bias.

The strongest source on the other side measures something else. Saunders, Faller and Tolman (2011), an unpublished final report to the National Institute of Justice, surveyed the beliefs of 465 evaluators, 200 judges, 250 attorneys, and 193 domestic violence workers about abuse allegations. It measured beliefs and estimates, not the truth or falsity of any allegation; its authors concede that the representativeness of their samples is unknown; and they report that a widely repeated statistic attributed to the American Judges Association, that 70 percent of contested custody cases involve abusers seeking custody, had no supporting research. A belief survey cannot establish how often allegations are true. Its authors' own correction of a circulating statistic is the most useful finding in it.

What follows is that neither claim made in the public debate survives the evidence. The claim that false allegations are too rare to matter is contradicted by the higher rate of intentional fabrication that caseworkers recorded in custody disputes (12 percent against 4 percent overall in the first national cycle). The claim that allegations in custody cases are typically false is contradicted by the same data and by the family-court samples in which about half of allegations had some substantiation. The defensible statement is narrower and harder for either side to escape: allegations in custody disputes are common, a meaningful share are substantiated or suspected, a non-trivial share are knowingly false, and no method validated for family courts is routinely required to sort them. A fabricated allegation, by either parent, harms the child. So does a true allegation that is disbelieved.

6.2.3 What the State's own agency reports about its findings

Texas has its own measure of how well its investigators sort allegations, and it comes from the agency itself. In fiscal year 2024 the Department of Family and Protective Services completed 144,189 investigations and found "Reason to Believe" in 34,394 (24 percent), "Ruled Out" in 92,063 (64 percent), "Unable to Determine" in 16,104 (11 percent), and "Unable to Complete" in 1,628 (DFPS, Self-Evaluation Report, Aug. 31, 2025, p. 117). A confirmed finding is the agency's own judgment by a preponderance of the evidence, not a court adjudication. Among the findings that are appealed, the record is troubling. The Department reports that, of the Child Protective Investigations cases appealed in fiscal year 2024, 55 percent were not upheld, and that the average internal review took 87 days (pp. 232 to 233). Appeals rose by nearly three quarters in a single year and left more than 2,000 cases in backlog by February 2025 (p. 233). Families the Department served waited an average of 506 days for their own records, while litigants with a subpoena waited 33 (p. 233). The Department's own conclusion is that "this percentage merits a review of the statewide disposition processes" (p. 232), and it asks the Sunset Commission to consider up-front due process in all qualifying cases, a three-year window to request review in family cases in place of 45 days, and an internal expungement process (p. 235).

The figure has a limit, and the limit must be stated with it. It is a rate among appealed findings, the Department says that only a small portion of findings are appealed (p. 232), and it gives no count of appeals from which the share of all findings could be computed. Appellants may be a selected group with stronger cases. The selection argument limits what the figure shows about findings as a whole, and the figure is not a rate of error across them. It does not remove the point that matters for a custody court: the records a Texas evaluator is required to obtain and weigh include agency findings that, in the appealed subset, were not upheld more than half the time, and the parent who seeks review waits months for it while the finding stands, and longer than a year for the file.

6.2.4 What follows: a real burden of proof

The argument now has its premises. The family court decides on a preponderance, and on several of the most consequential questions on the mere presentation of credible evidence. It does not routinely require a method validated for family courts to test whether an allegation is true; the literature cannot supply a base rate in either direction; and the State's own investigators, whose findings feed the evaluation, saw 55 percent of appealed findings not upheld, a selected group that does not measure the error rate of findings as a whole. A system that restricts a parent's relationship with a child on an allegation should protect the child at once, test the allegation on a record, and allow a jury, not a plea or a bare allegation, to reduce a parent's time.

The author's recommendation begins with protection. Emergency safety orders remain available in the family court on a corroborated showing of imminent danger, for no more than fourteen days without a hearing with findings, so that no child waits for a verdict to be safe. A

final hearing must be held, and the time-back rule below applies if the order ends without a jury finding. Beyond that, an allegation of abuse made in a suit affecting the parent-child relationship is referred for investigation on a fast track, with a recorded forensic interview, a closed courtroom, testimony by closed-circuit means where a child must testify, and an expedited setting. The custody merits are stayed or expedited rather than decided on a bare allegation. Where a finding of family violence under § 153.004 is made by clear and convincing evidence, restriction follows. Where only a showing of credible evidence exists, the restriction is temporary and subject to a hearing within fourteen days with findings. A reduction of a parent's possession, access, or conservatorship on the ground of alleged criminal conduct may rest only on a jury's finding: a conviction by jury verdict, or a unanimous jury finding in the family case by clear and convincing evidence. A felony conviction by jury verdict for conduct that endangers the child removes the parent's presumptive time. Reports to the Department under chapter 261 are untouched; the recommendation governs what a custody court may do with an allegation, not who may make a report.

The recommendation carries a time-back rule. If an allegation of abuse or neglect made in a suit affecting the parent-child relationship is not found by a jury, on a final hearing, or is dismissed, withdrawn, or otherwise unsubstantiated, the accused parent is awarded make-up possession equal to twice the time lost to any restriction imposed because of the allegation, taken in blocks of the parent's choosing within twenty-four months, in addition to the equal-possession presumption and enforced as possession. The same rule applies to time lost to any unfounded allegation of any kind. The purpose is to make false and unsubstantiated allegations cost the accuser the advantage the allegation was meant to buy. Real, substantiated findings keep every protection the Code now gives; only an allegation that fails to be established triggers make-up time. Emergency safety orders stay available, and when one ends without a jury finding the rule applies to the time it removed.

A plea is not a finding. (a) No plea of guilty or nolo contendere, deferred adjudication, plea agreement, stipulation, agreed order, or default, in any criminal or civil proceeding, is evidence of, or a basis for, any finding of abuse, neglect, endangerment, or unfitness in a suit affecting the parent-child relationship, or for any reduction of a parent's possession, access, or conservatorship. (b) A reduction on the ground of alleged criminal conduct may rest only on a jury's finding: a conviction by jury verdict, or a unanimous jury finding in the family case by clear and convincing evidence. (c) No term concerning a parent's possession, access, or conservatorship may be made a condition of, or bargained for in, a plea; any such term is void. (d) Before accepting a plea from a parent of a minor child, the court shall admonish the defendant in plain language and in writing that the plea cannot be used to reduce the defendant's time with the child, and defense counsel shall certify in writing that the defendant was so advised; a misstatement by counsel, prosecutor, or court of the family-court effect of a plea is a ground to withdraw the plea. (e) An order that reduced a parent's time on the basis of a plea is voidable on motion at any time. (f) A judge who pressures a plea by reference to its family-court consequences is subject to referral to the State Commission on Judicial Conduct. (g) Emergency safety orders remain available on a corroborated showing of imminent danger, for

no more than fourteen days without a hearing with findings. (h) This section regulates the civil effect of pleas. It does not limit charging, bargaining, or the prosecutor's exclusive function.

The other half of the design is a consequence for the knowing lie. Texas already makes it a state jail felony to make a report under chapter 261 that the reporter knows is false, “with the intent to deceive,” and requires a convicted reporter to pay the falsely accused person’s fees and costs (Tex. Fam. Code § 261.107(a), (d)). Inside a pending custody suit, however, a party’s report that the party “knows lacks a factual foundation” is deemed knowingly false and carries “a civil penalty not to exceed $500” (§ 153.013(a), (c)). Inside the very proceeding where a false accusation can cost a parent the child, the Code prices it at no more than $500. The author recommends a mirror penalty for a knowingly false allegation in a custody case, punished at the level of the offense falsely alleged, subject to four safeguards: a separate conviction of the accuser, proof of knowing falsity, an express exclusion for reports made in good faith, and charging by a prosecutor only.

The strongest objection is that a criminal standard will leave some true allegations unproven and some children with a parent who abused them. That is a real cost, and the report does not deny it. The answer is threefold. Immediate protection on a showing of imminent danger does not wait for a verdict, and the jury path is the only route by which an allegation of crime can reduce a parent’s time. Protective orders remain available on their own terms, as Section 6.3 describes. And the alternative is not a forum that reliably finds the truth; it is a forum that acts on allegations it cannot test, using agency findings that its own agency did not uphold in 55 percent of the cases appealed, a selected group. The precondition for measuring whether the change works is data Texas does not now collect. The author recommends that the Office of Court Administration report each year, by county, the number of allegations of abuse made in suits affecting the parent-child relationship, the stage of the suit at which each was made, its disposition, and any court finding.

6.3 Ex parte protective orders

6.3.1 What the Code authorizes

A Texas court may restrict a parent’s conduct toward a child before the parent knows a case exists. Section 83.001(a) provides: “If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.” The order may “direct a respondent to do or refrain from doing specified acts” (§ 83.001(b)). It is valid for up to 20 days and “may be extended for additional 20-day periods” on the applicant’s request or on the court’s own motion, with no limit on the number of extensions stated in the statute (§ 83.002). The court may dispense with a bond (§ 83.003). Since 2023 a temporary ex parte order “is enforceable to the same extent and in the same manner as a final protective order” (§ 83.0025).

The application must contain “a detailed description of the facts and circumstances concerning

the alleged family violence and the need for the immediate protective order" and be signed under an oath that the facts "are true to the best knowledge and belief of each applicant" (§ 82.009(a)). The statutory definition of family violence includes an act "intended to result in physical harm, bodily injury, assault, or sexual assault," or "a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault," as well as listed forms of child abuse (§ 71.004). The respondent may move to vacate "at any time," and the court must set the motion "as soon as possible" (§ 83.004). The hearing on the application itself must be set within 14 days of filing unless the applicant requests a later date (§ 84.001(a)). At the close of that hearing the court "shall find whether family violence has occurred" and, if it so finds, "shall render a protective order" (§ 85.001(a), (b)). The sections read state no standard of proof for that finding; the Children's Commission's Child Welfare Law Bench Book reads the governing standard as a preponderance.

The Legislature has already shown that it knows how to require more. A temporary ex parte order may exclude a person from the person's own residence only if the applicant files a sworn affidavit with "a detailed description of the facts and circumstances requiring the exclusion" and "appears in person to testify," and the court must find recent family violence and a clear and present danger of more; the court may recess to telephone the respondent so that the respondent may be present, and must resume before the end of the working day (§ 83.006). For the house, the Code requires live testimony, specific findings, and an attempt to reach the other side the same day. For the child who lives in the house, it requires an application signed on belief.

The order's effect reaches into the custody suit. A court deciding whether there is credible evidence of a history of family violence "shall consider whether a protective order was rendered under Chapter 85" against the parent during the two years before filing or during the suit (§ 153.004(f)). A final order rendered against a respondent who is a party to a pending suit affecting the parent-child relationship remains in effect "until the second anniversary of the date on which the final order in the suit is rendered" (§ 85.025(a-3)), and the general term of two years may be extended beyond two years on findings that include a felony offense involving family violence "regardless of whether the person has been charged with or convicted of the offense" (§ 85.025(a-1)(1)). A temporary ex parte order, renewed in 20-day increments, can therefore set the arrangement under which a child lives while a custody suit begins, and the final order that follows can outlast the suit by two years.

6.3.2 What the State and federal firearm laws already recognize

Two other bodies of law treat the absence of a hearing as decisive, and their treatment exposes the Family Code's. The federal firearm prohibition for persons under protective orders applies only to an order that "was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate" (18 U.S.C. § 922(g)(8)(A)), and that either includes a finding that the person "represents a credible threat to the physical safety" of an intimate partner or child or explicitly prohibits the use of force (§ 922(g)(8)(C)). A chapter 83 order issues "without a hearing" (Tex. Fam. Code § 83.001(a)), so it does not meet the first

condition. In United States v. Rahimi, 602 U.S. 680 (2024), the Supreme Court upheld § 922(g)(8) as applied to a person whom a court had found to pose a credible threat, emphasizing that the disability is temporary and rests on an individualized judicial finding; the underlying order was a Tarrant County, Texas order entered by consent. The Texas firearm offense for public employees under protective orders lists orders under Family Code § 6.504 and chapter 85, Code of Criminal Procedure article 17.292 and subchapter A of chapter 7B, and chapter 88 orders from other jurisdictions, and does not list chapter 83 (Tex. Penal Code § 46.04(c)). A final chapter 85 order, by contrast, may prohibit the respondent from possessing a firearm (Tex. Fam. Code § 85.022(b)(6)).

Federal law also conditions interstate enforcement on process. A protection order receives full faith and credit in every State only if the respondent had reasonable notice and opportunity to be heard, and for an ex parte order that hearing must come within the time State law sets "and in any event within a reasonable time after the order is issued" (18 U.S.C. § 2265(a), (b)). Both sovereigns have thus decided that an order issued without notice or a hearing is not reliable enough to carry the consequences they attach to their most serious restraints. Texas allows the same order, on the same application, to separate a parent from a child.

6.3.3 What the evidence on protective orders shows

The research on protective orders is observational and mixed, and it does not answer the question most relevant to a custody court. In a Seattle cohort of 2,691 women, permanent protective orders were associated with about an 80 percent reduction in police-reported physical violence the following year; temporary orders were not, and women holding only temporary orders had more police-reported psychological abuse than women with no order (Holt, Kernic, Lumley, Wolf & Rivara, 2002; Grade B, retrospective cohort). Across reviewed studies, violation rates ranged from 7.1 to 81.3 percent, with a mean of about 40 percent in one meta-analysis; most violations occurred in the first three months, stalking predicted violation, and about 20 percent of orders were associated with escalation (Benitez, McNiel & Binder, 2010). In Kentucky, among 698 women followed for a year, two in five had no violence after the order and three in five had continuing violence, yet most judged the order effective (Logan & Walker, 2009). These findings support protective orders as a tool for victims. They also show that the temporary order, the one issued without a hearing, is the one with the weakest record.

On use in litigation, the evidence is thinner still. In one California family court, male petitioners alleging lower-level violence were less likely than female petitioners to receive temporary orders, with no difference at moderate or high levels of violence (Muller, Desmarais & Hamel, 2009; one county). No peer-reviewed study was found that measures how often ex parte orders are sought for advantage in divorce or custody litigation, or how often they are dissolved at the full hearing for that reason. That absence is a gap, not evidence in either direction, and the report draws no conclusion about the frequency of misuse. Texas does count the orders: in fiscal year 2025 the district courts signed 11,559 protective orders, and across district and statutory county courts 14,380 protective-order cases without a divorce were filed and 12,651 orders signed (Office of Court Administration, FY 2025 activity reports). Texas does not count how

many were sought while a custody suit was pending, how many temporary orders were extended, or how many were dissolved at the hearing.

6.3.4 What follows

The author recommends a set of changes that keep immediate protection where danger is imminent and add process where it is not. Every temporary ex parte order should rest on written findings and a record, and the sworn application should state the specific acts relied on. An order should be extendable once without service and a hearing, and not again. Where the application shows imminent danger of death or serious bodily injury, protection should issue at once and the hearing should be held on the next court day. Safety orders, meaning stay-away and no-contact provisions, should issue from the criminal district court, which tries family violence offenses on proof beyond a reasonable doubt, while the family court keeps orders preserving property. A knowingly false application should carry the mirror penalty described in Section 6.2.4, with the same safeguards for good faith. A respondent asked to consent to an agreed protective order should be told on the record, before consenting, that the order's terms may trigger the federal firearm prohibition, because Rahimi arose from exactly such an order. And the Office of Court Administration should publish each year, by county, the number of applications, temporary ex parte orders, extensions, hearings, findings of family violence, and applications filed within 30 days before or after the filing of a suit affecting the parent-child relationship.

The objection that any delay risks a life is answered by the imminent-danger route, which removes the delay where the danger is real. The objection that a higher bar will deny relief to genuine victims is answered in part: some cases will come out differently, the report states no estimate of how many, and the recommendation moves the proof of a crime to the forum designed to hold it rather than lowering protection. A further procedural benefit follows from federal law. A prompt adversarial hearing after every ex parte order strengthens the interstate enforceability of Texas orders under 18 U.S.C. § 2265, which is an argument for the change that even its strongest opponents should accept.

6.4 What the partner-violence evidence does and does not show

6.4.1 Acts, injuries, and fear

Allegations of family violence carry the consequences Sections 6.2 and 6.3 describe, and the debate over those consequences is conducted with statistics. The best evidence on partner violence supports a paired proposition that neither side of that debate fully accepts. The use of physically aggressive acts between heterosexual partners is close to symmetric; the consequences of those acts are not. Archer's meta-analysis found women slightly more likely than men to use one or more acts of physical aggression (d = -.05) and men more likely to inflict injury (d = .15), with 62 percent of those injured by a partner being women (Archer, 2000). Archer's later analysis and the review by Desmarais and colleagues point the same way: similar proportions of men and women perpetrate physical violence, while injury, fear, and severe

violence fall more heavily on women (Archer, 2002; Desmarais et al., 2012). The strongest critique, a commentary by White, Smith, Koss and Figueredo (2000), argues that act-count measures omit context, severity, and injury; it is an argument for reporting the paired proposition, not against it, and Archer's own abstract concedes that the database leaned toward young American dating samples.

The national survey conducted by the Centers for Disease Control and Prevention shows the first half of that shape. In the 2010 to 2012 survey, lifetime intimate partner violence (contact sexual violence, physical violence, or stalking) was reported by 37.2 percent of heterosexual women and 31.9 percent of heterosexual men, and lifetime physical violence by a partner by 32.4 percent of women and 29.3 percent of men (Chen et al., 2020; N = 41,174; response rates 27.5 to 33.6 percent). The economists' data agree on the baseline: in the national surveys Stevenson and Wolfers analyzed, the rate of husband-to-wife violence was 11.7 percent and of wife-to-husband violence 11.9 percent, and after unilateral divorce reform spousal violence fell in both directions (Stevenson & Wolfers, 2006). These are cross-sectional surveys of self-report (Grade C). Read with the meta-analytic evidence above, they support a finding about groups: aggressive acts run in both directions in similar proportions, while injury and fear fall more heavily on women. They do not tell a court which parent in a particular case was the aggressor.

Federal child-maltreatment data place both parents at the center of child protection without ranking either. In federal fiscal year 2023, 89.0 percent of maltreatment victims were maltreated by one or both parents, and perpetrators were 51.6 percent female and 47.3 percent male (U.S. Department of Health and Human Services, Child Maltreatment 2023). These counts reflect who is reported and investigated, and they are shaped by how much time each caregiver spends with children. They are not a rate per parent and support no ranking of the sexes. They support a narrower proposition that is enough for the law: a child's safety after separation is a question about each parent's conduct, to be assessed the same way for both.

6.4.2 What the law's most common response has been shown to do

Arrest is the response to partner violence that has been tested by random assignment. The Minneapolis experiment, with 314 incidents, reported that arrest halved repeat offending, and its result helped drive mandatory-arrest policies; five replication experiments funded by the National Institute of Justice then produced mixed results (Sherman and Berk's experiment, as described in the institute's research brief). Pooling those replications across 4,032 incidents, Maxwell, Garner and Fagan (2001) found that arrest was followed by about 25 percent fewer victims reporting any further aggression and about 30 percent fewer incidents, an effect they called consistent but modest; police records showed a much smaller reduction, about 4 percent. Fewer than 30 percent of suspects, arrested or not, aggressed again against the same victim during follow-up, and the suspect's age and prior record predicted repeat offending more strongly than arrest did. The authors cautioned that policies requiring arrest in every case may draw resources away from identifying and responding to the worst offenders and the victims most at risk. The experiments covered male suspects and female victims in the 1980s. What they support is targeted assessment of risk, which is a judgment about individuals on evidence,

over uniform rules triggered by an allegation.

The research on custody law itself adds a caution against the assumption that shared parenting endangers parents. In Halla's review of the American joint custody laws adopted at different times across the States, those laws were followed by fewer reported husband-on-wife domestic violence incidents, about 2.7 percentage points from a base of 11.7 percent (Halla, 2015; Grade B for the law-timing design). The 2026 Swedish study of randomly assigned judges detected no increase in either parent being an intimate partner violence suspect after joint custody, though its estimate was imprecise (Canessa et al., 2026, working paper). Neither study shows that shared parenting reduces violence in any given family. Both cut against the claim that a starting presumption of shared parenting must increase it.

6.4.3 A figure that was never measured

The legislative record on family violence has carried at least one figure whose source does not support it, and its history is an object lesson in what happens when a number is repeated rather than traced. The proposition that violence is "the leading cause of injuries to women ages 15 to 44" appears in the Senate Judiciary Committee's 1993 report on the Violence Against Women Act and was quoted from that page by Justice Souter in dissent in United States v. Morrison, 529 U.S. 598 (2000) (Souter, J., dissenting) (citing S. Rep. No. 103-138, at 38 (1993)). The claim descends from emergency-department research at a single hospital in New Haven, Connecticut. Flitcraft's 1978 study examined 481 women seen in one emergency room in December 1975 and found, on review of their records from 1970 to 1976, that 9.6 percent had a history of partner abuse (Flitcraft, 1978). In 1990 the Centers for Disease Control wrote that "intimate violence is a leading cause of injuries to women," supported by "one study" (Centers for Disease Control, 1990). By 1992 the claim was circulating as "the leading cause," and in 1993 a witness before the Senate Judiciary Committee repeated a version of it with no source. When the Bureau of Justice Statistics first measured violence-related injuries in a national sample of hospital emergency departments, violence of every kind accounted for about 3.6 percent of injury visits, and about 37 percent of the 554,700 women treated for violence-related injuries had been hurt by a current or former partner (Rand, 1997, pp. 1 to 2), a measure the Bureau itself said under-identifies intimate violence.

Partner violence is a serious and measurable cause of injury, and nothing in that history diminishes it. The national ranking was never measured. A finding of that kind degrades the record in two ways. It misleads the body that relies on it, and it hands anyone who later checks it a reason to discount the true and well-measured figures printed beside it. The rule of method that follows applies to every side of this debate, including the author's: a figure enters a Texas finding only after it has been traced to the page that measured it. The same rule disposes of the circulating lists of fatherhood multipliers, which the report does not use for the same reason.

6.4.4 What follows

The evidence supports three design rules for the Texas statutes. The terms of the law should be neutral as to sex, because aggression is reported in both directions in similar proportions. Its

application should attend to injury, fear, and risk, because those consequences are not symmetric and because the arrest experiments show that risk, not the bare fact of an allegation, predicts what happens next. And every figure that the Legislature writes into a finding should be traced to its source. The author's recommendations in Sections 6.2 and 6.3 meet all three: they apply to any parent, they preserve immediate protection where danger is shown, and they move the proof of violent crime to the forum built to test it.

6.5 Parental alienation as behaviors, not a diagnosis

The opposite charge, that one parent has turned a child against the other, has produced its own war of labels. The productive frame, and the one toward which both sides of the scholarly debate have moved, is observable behavior rather than diagnosis. Harman, Kruk and Hines (2018) define parental alienating behaviors as a parent's sustained use of a range of tactics that damage the child's relationship with the other parent, and classify them as a form of family violence (Psychological Bulletin). Harman, Warshak, Lorandos and Florian (2022) argue that the research has grown into a maturing empirical field of more than 200 studies, and a co-author's published summary reports that studies recording the sex of the parent find such behavior in both mothers and fathers (the proponents' reviews are not independent). Their critics agree on the starting point and dispute the rest. Milchman, Geffner and Meier (2020) object to "evaluative labels or diagnoses instead of descriptions of behavioral functioning" and identify missing validity studies, unreliable prevalence data, untested claims about coaching, and unevaluated treatments. Mercer (2019) concludes that advocates of intensive alienation treatments have not shown them to be safe and effective. The United Nations Special Rapporteur on violence against women and girls recommends that States prohibit the use of parental alienation "or related pseudo-concepts" in family law cases (A/HRC/53/36, para. 74(a) (Apr. 13, 2023)), a recommendation framed around women and mothers that cites no study of false-allegation rates.

Definitions decide what is found. In a United Kingdom survey of 1,005 separated parents, the reported prevalence of alienating behaviors fell from between 39 and 59 percent under broad measures to about 3.5 percent once context, such as the prior quality of the relationship and whether the behavior was reciprocated, was taken into account (Hine, 2025; Grade C, self-selected sample). A label that can describe half of separated parents or one in thirty, depending on the questionnaire, is not ready to decide a custody case. A specific act, such as a missed exchange, a withheld message, or a statement to the child disparaging the other parent, can be observed, recorded, and proved.

Texas law already speaks in those terms, imperfectly. The State's public policy is to "assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child" and to "encourage parents to share in the rights and duties of raising their child" after separation (Tex. Fam. Code § 153.001(a)(1), (3)). Among the factors a court weighs in appointing joint managing conservators is "whether each parent can encourage and accept a positive relationship between the child and the other parent" (§ 153.134(a)(3)). The Penal Code, however, criminalizes enticing a child away only in one direction: under §

25.03(b), “A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, the noncustodial parent knowingly entices or persuades the child to leave the custody of the custodial parent.” The same conduct by the parent who already has custody, directed at the child’s relationship with the other parent, is not that offense. The Code thus recognizes interference with a child’s relationship with a parent as a wrong worth a criminal penalty, and then assumes that only one of the two parents is capable of committing it.

What follows is a vendor-neutral standard of evidence in place of a label. The author recommends that Texas courts hear evidence of specific, observable conduct by either parent that interferes with the child’s relationship with the other parent; that they hear it alongside, and never in place of, any evidence of abuse, consistent with the multiple-hypothesis approach Saini, Laajasalo and Platt (2020) recommend; that they make written findings on the conduct proved; and that they admit no syndrome, diagnosis, or treatment program that has not been validated for the use proposed. The rule applies with equal force to the claim that alienation explains a child’s reluctance and to the claim that alienation is never real. Both are assertions about a family that only evidence about that family can test.

6.6 What follows

Each instrument this chapter examined bears, in the end, on which parent becomes the “custodial” parent and which the “noncustodial” one. The attachment measures are validated as attachment measures; none of the instruments has been validated as a basis for making that choice on the evidence a Texas family court ordinarily has. That designation does not end with the custody order. It sets the direction in which child support flows, the amount the noncustodial parent owes, and the enforcement machinery that follows a missed payment, which Chapter 5 showed is measured, under the federal performance formula, by orders and collections rather than by children. Chapter 7 takes up that architecture: how Texas computes and enforces child support, what it does about parentage and retroactive support, and what the author proposes to change within, and where necessary against, the federal floor. # Chapter 7. Child Support

7.1 From the decision to the debt

Chapter 6 examined how a Texas court decides which parent a child will live with: the evaluations it orders, the allegations it weighs, and the ex parte orders it enters before the other parent is heard. Those decisions do not end with possession. In nearly every case they produce a second order that follows the first as surely as a shadow, an order that one parent pay the other. The parent who leaves the courtroom with less time leaves with a debt that the law treats as a judgment from the day each installment falls due, that accrues interest, that cannot be reduced for the past, and that the State may enforce by withholding wages, suspending licenses, reporting to credit bureaus, and confinement. Chapter 5 showed that the federal program financing this machinery is measured by five numbers and pays the State for orders and collections. This chapter examines the machinery itself: how support is set, how it is

collected, what the evidence read indicates the collection tools accomplish, and what the law permits the State to do to a parent who does not pay.

The chapter ends with the author's own positions on child support. They are stated as recommendations, and each is set beside the federal rule it meets or conflicts with. Where a position conflicts with a federal condition, the chapter says so plainly and names the route: a design that complies, a federal exemption or demonstration, or the price of leaving the federal program. Texas cannot keep federal child support money and disregard the conditions attached to it. It can decide, with its eyes open, which conditions are worth their price.

Statutory text in this chapter is quoted from the Family Code as rendered Dec. 13, 2025, the Government Code as rendered Oct. 1, 2026, the Penal Code as rendered Apr. 10, 2026, the Texas Constitution as rendered July 31, 2026, the United States Code, 2024 Edition, and the Code of Federal Regulations as current on Oct. 1, 2026.

7.2 The architecture: a percentage and a presumption

Texas sets child support by a percentage of the paying parent's net resources. For a parent whose monthly net resources are at least $1,000 and not above the cap the Attorney General publishes, "the court shall presumptively apply" a schedule of 20 percent for one child, 25 percent for two, 30 percent for three, 35 percent for four, and 40 percent for five (Tex. Fam. Code § 154.125(b)). Below $1,000 a month the court presumptively applies a low-income schedule of 15, 20, 25, 30, and 35 percent (§ 154.125(c)). The amount produced "is presumed to be reasonable, and an order of support conforming to the guidelines is presumed to be in the best interest of the child" (§ 154.122(a)). A court may find the guideline "unjust or inappropriate under the circumstances" (§ 154.122(b)), and must then state findings (§ 154.130). Texas uses the percentage-of-obligor-income model, which does not consider the receiving parent's income at all (National Conference of State Legislatures and ABA Family Law Quarterly survey, secondary sources, Grade B).

Federal law sets the frame within which Texas chose this design. As a condition of approval of its child support plan, a State must have one set of guidelines, and they must "at a minimum" provide that "the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay" that takes into account all of that parent's income "(and at the State's discretion, the custodial parent)"; that "Takes into consideration the basic subsistence needs of the noncustodial parent … who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State"; and that, where income is imputed, considers the parent's actual circumstances, including assets, work history, skills, education, health, criminal record, and "the local job market" (45 C.F.R. § 302.56(c)(1)(i) to (iii)). The guideline must "Provide that incarceration may not be treated as voluntary unemployment" (§ 302.56(c)(3)). The amount it produces must be a rebuttable presumption, and a departure requires a written finding that the guideline would be "unjust or inappropriate in a particular case," stating the amount the guideline would have required and the reason for the variance (§ 302.56(f), (g)).

Two features of the federal rule matter for everything that follows. First, the federal floor is about ability to pay, and it leaves the design of the low-income adjustment to the State: "a self-support reserve or some other method determined by the State." Texas chose a lower percentage below $1,000 a month in net resources. It did not choose a reserve that protects a minimum income from any order at all. Second, the federal rule requires the State to look at the poor. Every four years the State must review its guidelines, and the review must consider "the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level," and must analyze case data on "the rates of default and imputed child support orders," including "a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment" (§ 302.56(e), (h)(1), (2)). The federal government already requires Texas to ask the question this chapter asks. What it does not require is that Texas act on the answer.

The evidence on what happens when orders outrun ability to pay is consistent, and it runs against the assumption that a larger order yields more money. In Wisconsin administrative data on 29,857 parent pairs whose orders began between 2010 and 2012, analyzed with fixed-effects models, compliance and regularity of payment fell as the order's share of the father's earnings rose, and for fathers below 200 percent of the poverty line the amount paid did not differ by the size of the burden (Hodges, Meyer & Cancian, 2019; Grade C, one State, fathers only, formal wage records only). Related Wisconsin work found that nonpayment tracks unstable work, low earnings, and incarceration, and that orders based on imputed income or entered by default are paid less and complied with less (Cancian, Kim & Meyer, 2021; Cancian, Cook & Meyer, 2019; Grade C). The inference from these findings, which this report draws and labels as inference, is limited to what the Wisconsin data show: among fathers below 200 percent of the federal poverty guideline, a larger share of earnings in the order did not produce larger payments, and the unpaid balance grew. No Texas data on the question were found, and whether Texas orders behave the same way is not known.

7.3 Judgment by operation of law, interest, and the arrears

Every unpaid installment becomes a judgment the moment it is missed. "A child support payment not timely made constitutes a final judgment for the amount due and owing, including interest as provided in this chapter" (Tex. Fam. Code § 157.261(a)). The rule is federal in origin. To keep its plan, a State must have procedures that make "any payment or installment of support under any child support order … (on and after the date it is due)" a "judgment by operation of law," "entitled as a judgment to full faith and credit," and "not subject to retroactive modification by such State or by any other State," except that the State may permit modification "with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given" (42 U.S.C. § 666(a)(9) (2024 ed.); see 45 C.F.R. § 303.106). A parent who loses his job on Monday and files for modification on Friday owes the full amount for every installment due before the other parent receives notice, and no court in any State may reduce it.

Texas adds interest. Delinquent support accrues “six percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment,” and a confirmed arrearage judgment and a judgment for retroactive or lump-sum support accrue the same rate until paid (§ 157.265(a) to (c)). No federal provision read for this report requires interest on child support. The six percent is a Texas choice.

The arithmetic of these rules is visible in the State’s own figures. At the end of fiscal year 2024 Texas reported $20,515,065,735 in total arrears due, up from $17,882,087,824 in fiscal year 2020, in 1,076,427 cases, of which 625,350 paid anything toward arrears that year (Office of Child Support Services, FY2024 Preliminary Data Tables P-85 to P-88). Texas holds 18.0 percent of the arrears reported by the 51 jurisdictions with roughly 9 percent of the national population (computed). Arrears payments distributed in fiscal year 2024 totaled $1,102,684,515; at that rate, with no new arrears, the existing balance would take about 18.6 years to retire (computed; arithmetic, not a forecast). Definitions of arrears differ across States, and the comparison carries that caution. Chapter 5 showed that Texas collects current support at the median national rate. The arrears show what a median collector accumulates when its orders are among the largest per case in the country and its law forbids correcting any of them for the past.

A debt that grows faster than it is paid is not a collection tool. It is a ledger of obligations the State has set at amounts a large part of its caseload cannot meet, carried forward at six percent and protected by federal law from correction.

7.4 Retroactive support

Texas lets a court order support for the time before anyone asked for it. “The court may order a parent to pay retroactive child support if the parent: (1) has not previously been ordered to pay support for the child; and (2) was not a party to a suit in which support was ordered” (§ 154.009(a)). On a finding of parentage, “the court may order retroactive child support as provided by Chapter 154 and, on a proper showing, order a party to pay an equitable portion of all of the prenatal and postnatal health care expenses of the mother and the child” (§ 160.636(g)). The court applies the guidelines (§§ 154.009(b), 160.636(h)) and considers the obligor’s net resources during the period, whether the mother tried to notify him, whether he knew, whether the order would impose undue hardship, and whether he provided support before suit (§ 154.131(b)). The Code then sets a limit and a way around it. “It is presumed that a court order limiting the amount of retroactive child support to an amount that does not exceed the total amount of support that would have been due for the four years preceding the date the petition seeking support was filed is reasonable and in the best interest of the child,” but the presumption “may be rebutted by evidence that the obligor … knew or should have known that the obligor was the father of the child … and … sought to avoid the establishment of a support obligation” (§ 154.131(c), (d)). The court keeps jurisdiction to order retroactive support if the petition is filed “not later than the fourth anniversary of the date of the child’s 18th birthday” (§ 154.131(f)). An agreement between the parents does not bar retroactive support the Title IV-D agency seeks unless the agency joined it (§ 154.009(c)).

Two facts frame the policy question. Texas law does not start retroactive support at conception. Bills that would have done so were filed in the 88th and 89th Legislatures and were not enacted, and the Code as written presumes a four-year limit measured back from the petition. And no data were found on how often Texas courts exceed four years; the presumption is rebuttable, so the reach of retroactive orders depends on findings in each case.

The structural problem is that retroactive support converts a period in which no order existed, and in which the obligor may not have known a child existed, into a lump judgment that accrues six percent interest from the day it is rendered (§ 157.265(c)). It arrives all at once, in an amount set by guidelines applied to income the obligor earned without knowing it was owed, and it begins life as a debt the obligor could not have paid as it accrued because no one told him it was accruing. Federal law does not require it; no provision read for this report directs a State to award support for periods before a petition. Federal law does require that bills for "pregnancy, childbirth, and genetic testing" be admissible without foundation testimony and be "prima facie evidence of amounts incurred" (42 U.S.C. § 666(a)(5)(K)). The federal floor contemplates recovery of documented birth costs. It does not contemplate, or require, years of support for a time when no one asked.

7.5 Parentage without proof

The duty to pay begins with a finding that a man is a child's father, and Texas law permits that finding without a genetic test in several ways.

A man may sign an acknowledgment of paternity, which must only state whether genetic testing has occurred (§ 160.302(a)(4)), and "a valid acknowledgment of paternity filed with the vital statistics unit is the equivalent of an adjudication of the paternity of a child and confers on the acknowledged father all rights and duties of a parent" (§ 160.305(a)). He may rescind it only "before the earlier of: (1) the 60th day after the effective date of the acknowledgment … or (2) the date a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support" (§ 160.307(a)). After that, he may challenge it "only on the basis of fraud, duress, or material mistake of fact," and only "before the issuance of an order affecting the child … including an order relating to support of the child" (§ 160.308(a)). A genetic test showing he is not the father is a material mistake of fact (§ 160.308(d)), but "a collateral attack on an acknowledgment of paternity signed under this chapter may not be maintained after the issuance of an order affecting the child" (§ 160.308(c)). A husband is presumed the father of a child born during the marriage, and a proceeding to adjudicate the parentage of a child with a presumed father must be brought by the child's fourth birthday unless the presumed father and the mother did not live together or have intercourse during the probable time of conception, or he was kept from suing by misrepresentations (§ 160.607). A court "shall order" testing at a party's request in a parentage proceeding (§ 160.502(a)), but may deny testing of a presumed father on a finding that his conduct estops him and that disproving the relationship would be inequitable, weighing nine factors bearing on the child's interest (§ 160.608).

Texas has one remedy for a man who learns he is not the father. Section 161.005, as amended in 2011 and again in 2013 (Acts 2013, 83rd Leg., ch. 227, eff. June 14, 2013), lets a man who signed an acknowledgment or was adjudicated "without obtaining genetic testing" petition to terminate, on a verified showing that he is not the genetic father and acted on "the mistaken belief … that he was the child's genetic father based on misrepresentations that led him to that conclusion" (§ 161.005(c)). He must file within two years after learning the facts (§ 161.005(e)), he may not use the remedy if he is an adoptive father or consented to assisted reproduction (§ 161.005(d)), and if testing excludes him, termination "ends the petitioner's obligation for future support of the child as of the date the order is rendered," together with interest accruing after that date, while leaving past obligations "enforceable until satisfied by any means available for the enforcement of child support other than contempt" (§ 161.005(h), (i)). The State recognizes that the man is not the father, ends his parental relationship, and continues to collect from him for the years he was wrongly made one.

Much of this structure is federal. A State's plan must include procedures under which a signed acknowledgment "is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of" 60 days or the first proceeding, and under which a later challenge lies "only on the basis of fraud, duress, or material mistake of fact," with "the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment" not suspended during the challenge "except for good cause shown" (42 U.S.C. § 666(a)(5)(D)(ii), (iii)). The regulation adds that "a voluntary acknowledgment must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity" (45 C.F.R. § 302.70(a)(5)(vii)), and lets the State choose whether the acknowledgment creates a rebuttable or a conclusive presumption (§ 302.70(a)(5)(iv)). Federal law also requires genetic testing in a contested case on a sworn request by any party (42 U.S.C. § 666(a)(5)(B)(i)). The federal floor thus requires testing when someone contests and forbids requiring further proceedings when no one does. It does not forbid a State from testing before an acknowledgment is signed, and it leaves to the State whether the acknowledgment's presumption is rebuttable.

7.6 The enforcement tools and what they accomplish

Federal law requires Texas to have a set of enforcement procedures as a condition of its plan: income withholding (42 U.S.C. § 666(a)(1), (a)(8), (b)); periodic reporting of delinquent parents to consumer reporting agencies, "only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information" (§ 666(a)(7)); and "authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses" of parents owing overdue support, which the State must have "and use in appropriate cases" (§ 666(a)(16)). Section 666(a) begins by tying these procedures to the State plan, and the price of failing an audit on them and not correcting is a reduction of the State's TANF grant of 1 to 2 percent for a first finding, 2 to 3 percent for a second consecutive finding, and more for later ones (42 U.S.C. § 609(a)(8)). The statute also gives the Secretary power to exempt a State

from any required procedure if the State shows with data "that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program" (§ 666(d)).

Texas has made the license tool more severe than federal law requires. Federal law requires the authority and its use "in appropriate cases." The Family Code allows suspension when a parent owes three months of support, was offered a repayment schedule, and failed to comply (§ 232.003(a)), and then provides that "On making the findings required by Section 232.003, the court or Title IV-D agency shall render an order suspending the license" unless the parent proves payment, good cause, or the four-part inability defense of § 157.008(c) (§ 232.008(a)). A stay requires "an immediate partial payment" of not less than $200 (§ 232.008(b-1)). The federal word is "appropriate." The Texas word is "shall."

The evidence on the tools is mostly associational, and it should be read at its grade. In Wisconsin administrative data on fathers who stopped paying, license suspension "does not consistently show a positive relationship with payments, and is sometimes statistically related to a lower likelihood of beginning to pay," while notices of intent to suspend, court hearings, and contempt were associated with beginning to pay; the authors state that their results "cannot be given a causal interpretation" (Meyer, Cancian & Waring, 2020; Grade C). The same report found that Texas used contempt hearings and bench warrants heavily in the first year of a federal demonstration. A Minnesota pilot that added outreach, case review, and alternatives before suspension prevented about one suspension for every eight parents with no statistically significant change in the amount paid (Solmeyer et al., 2024; Grade C, volunteer counties, no income data). A six-State study reported "no clear relationship between how states use enforcement tools and their child support collection rate," with States naming automatic withholding and tax intercepts as most effective (Selekman & Johnson, 2019; Grade D). The federal Congressional Research Service has stated that program data "do not specifically report on the amount of child support obtained due to state driver's license suspension policies" (CRS R41762, 2011). No randomized or natural-experiment study of license suspension itself was found. Read together, the sources indicate that the notice and the hearing carry most of the measured association with payment, and that the suspension adds little or nothing that anyone has measured. A tool that removes a parent's means of getting to work is applied, in Texas, by command.

The randomized evidence on alternatives is sobering and must be stated beside the rest. A federally sponsored randomized trial of procedurally just alternatives to contempt at six agencies in five States reduced contempt filings but did not improve the regularity of payment and produced a small but statistically significant reduction in compliance (Skemer, 2023; Grade A design). The Child Support Noncustodial Parent Employment Demonstration, randomized across eight States including two Texas counties with 10,161 parents, did not raise compliance, modestly brought orders closer to ability to pay, and raised parents' satisfaction and sense of responsibility, with small employment effects (Cancian, Meyer & Wood, 2019; summaries read; Grade B for its question). Parents' Fair Share, randomized at seven sites in the 1990s, made fathers more likely to pay, with no employment effect on the full sample (MDRC; summaries

read; Grade B). Texas's own court-ordered Non-Custodial Parent Choices program, which carried a jail option, was associated with payment consistency 50 to 67 percent higher and with custodial households about 10 percent less likely to receive TANF, though earnings converged after two to three years and the evaluators attribute part of the effect to the court order's motivating force (Schroeder & Doughty, 2009; Grade C, quasi-experimental). The honest summary is that softer processes do not by themselves raise collections, that services help some fathers pay, and that the harshest automatic tool, license suspension, has no measured benefit. None of these findings concerns an individual parent; each is a group average.

7.7 Contempt and Article I, Section 18

The Texas Constitution states the rule in seven words. "No person shall ever be imprisoned for debt" (Tex. Const. art. I, § 18). Texas jails parents for unpaid child support.

The reconciliation is judicial. The Supreme Court of Texas holds that the obligation to support a child arising from the parents' legal status "is not considered a 'debt' within Article I, section 18, but a legal duty" (Ex parte Hall, 854 S.W.2d 656, 658 (Tex. 1993), read as quoted in later opinions). In In re Henry, 154 S.W.3d 594 (Tex. 2005) (per curiam), the Court held that confinement for failing to pay property taxes ordered in a divorce decree violated Section 18, while reaffirming that a person may be confined for failing to pay child support because that obligation "is viewed as a legal duty and not as a debt." Those holdings govern Texas courts. This report states them as the law and does not argue that Section 18 as presently construed forbids confinement for unpaid support. It argues that the Legislature and the people may change what the courts have not.

Federal due process sets a floor. Whether contempt is civil or criminal turns on "the substance of the proceeding and the character of the relief," not on the label; criminal contempt requires criminal protections, including proof beyond a reasonable doubt; and a State may place on the contemnor the burden of proving inability to comply in a civil proceeding but not in a criminal one (Hicks v. Feiock, 485 U.S. 624, 631 to 632 (1988)). A court may not imprison a person who made bona fide efforts to pay and still could not without first considering alternatives (Bearden v. Georgia, 461 U.S. 660, 672 to 673 (1983)). In Turner v. Rogers, 564 U.S. 431 (2011), a South Carolina case, the Court held that due process does not automatically require appointed counsel for an indigent parent facing up to a year in jail for civil contempt for unpaid support when the other parent is unrepresented, but that the State must then supply substitute safeguards: notice that ability to pay is the critical issue, a form eliciting financial information, an opportunity to respond, and an express finding that the parent has the ability to pay.

Texas exceeds the federal floor on counsel and falls short of it in a way that matters on the finding. Where incarceration is possible, the court "shall inform a respondent not represented by an attorney of the right to be represented by an attorney and, if the respondent is indigent, of the right to the appointment of an attorney," and must appoint counsel for an indigent respondent (Tex. Fam. Code § 157.163(b), (e)). But inability to pay is an affirmative defense that the respondent must prove "by a preponderance of the evidence" (§ 157.006(b)), and the

defense requires four separate showings: that the obligor "(1) lacked the ability to provide support in the amount ordered; (2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed; (3) attempted unsuccessfully to borrow the funds needed; and (4) knew of no source from which the money could have been borrowed or legally obtained" (§ 157.008(c)). The statute as read does not require the court to make an express finding of present ability to pay before confinement. A parent too poor to pay must prove that he also tried and failed to borrow the money. The Government Code's 18-month cap on confinement for contempt does not apply: for contempt "for disobedience of a court order to make periodic payments for the support of a child," Chapter 157 governs and the cap "does not apply to that person" (Tex. Gov't Code § 21.002(f), (h)). Separately, intentional or knowing failure to support one's child is a state jail felony, with inability to provide support an affirmative defense (Tex. Penal Code § 25.05(a), (d), (f)), and federal law makes willful nonpayment of support for a child in another State a federal offense, with a rebuttable presumption of ability to pay from the existence of the obligation (18 U.S.C. § 228(a), (b)).

The burden of jail falls on the poorest obligors and on those whose debts the system made largest. In the Fragile Families data, 14 percent of fathers with child support debt had been jailed for it; debt above $10,000 more than tripled the odds, and having children with more than one mother raised them by 60 percent (Cozzolino, 2018; research brief read, not the full article; Grade C, fathers only). In South Carolina, the State from which Turner came, a legal study counted more than 1,500 child support contemnors jailed on any given day in 2005, 98 percent without counsel (Patterson, 2008). No Texas count exists. The State does not publish how many parents it confines for unpaid support, for how long, or after what finding.

The reach of contempt in Texas extends beyond support to the cost of collecting it. When a court finds a failure to pay, the respondent must pay the movant's attorney's fees, and those fees "may be enforced by any means available for the enforcement of child support, including contempt" (§ 157.167(a)). Chapter 5 described that provision as a fee market with a jail cell attached. The argument this report makes, and no court has held, is that the provision extends a remedy the courts justified by the child's need, the duty-not-debt holding, to a lawyer's invoice, so that a fee owed to counsel may be enforced by confinement.

7.8 What support does and does not buy a child

The program measures dollars, and dollars matter to a child. The question this report asks is whether the measure of dollars stands in for the measure the thesis puts first, the child's relationship with each parent. The one study read that tested the question suggests it does not.

In a national longitudinal sample of young men followed from adolescence into adulthood, Harper and McLanahan found that youths in father-absent households faced elevated odds of incarceration after controls for background and income, that youths living with their fathers alone showed no elevated risk, and that receipt of child support made no difference: the odds were 2.3 with support and 2.2 without, a difference that was not statistically significant (Harper & McLanahan, 1999 working paper, Table 4, Model 5; published 2004). The authors call this

estimate preliminary because of limits in how support was measured, the published tables were not checked against the working paper for this report, and the study is Grade C, observational with controls whose stronger robustness checks were underpowered. It is a single finding, and it is offered only for what it is: in the one dataset read that tested the question, the money did not substitute for the father.

The Attorney General's own description of its caseload points the same way. The agency reports about 1.5 million cases and 1.6 million children, nearly one in four Texas children, with 72 percent of the children in its caseload born outside marriage and current public assistance cases at 0.36 percent (Director's written testimony to the House Ways and Means subcommittee). Child support in Texas is no longer chiefly a means of repaying the State for welfare. It is the State's principal instrument for organizing the finances of parents who live apart, and it is measured, as Chapter 5 showed, by whether money moves.

What follows is a design principle, not a rejection of support. A child is entitled to the support of both parents. The system that collects it should be measured by whether the child is better off and whether the child keeps both parents, and it should not make the parent who pays less able to be a parent. An order that drives a father into debt he cannot retire, suspends the license he needs to reach work, and sends him to jail when he cannot pay did not raise payment among the poorest fathers in the Wisconsin data read, and it risks removing from the child's life the parent the order was meant to make responsible.

7.9 The author's positions against the federal floor

The positions below are the author's. They follow from the evidence in this chapter and in Chapter 5, and each is stated beside the federal rule it meets or conflicts with. The chapter distinguishes three cases: positions that fit within the federal text read; positions that conflict with it but can be pursued through a federal exemption or demonstration; and positions whose only route is to accept the price of leaving the federal conditions. The State cannot keep the federal funds and disregard the conditions. Congress may attach conditions to grants a State elects to accept, and a State that declines the conditions gives up the funds (South Dakota v. Dole, 483 U.S. 203 (1987)); the rule against commandeering State officers (Printz v. United States, 521 U.S. 898, 935 (1997)) protects a State that declines a program, not one that keeps the money and ignores the terms.

The positions, in brief, are these, each marked by tier. Tier A positions can be proposed in a form that fits the federal text. Tier B positions need a federal waiver or demonstration, or an act of Congress, and are proposed as requests for a waiver or pilot and not as ordinary bills. Two thresholds recur. "200 percent" means 200 percent of the federal poverty guideline for the household, and "250 percent" means 250 percent of that same guideline.

- Child support is owed only by a genetic parent, confirmed by DNA testing in every case and not waivable by agreement, with adoption carved out (Tier A if the federal agency approves testing before acknowledgment; Tier B if it does not).
- No retroactive child support (Tier A).

- A parent collects support only when the receiving household is below 200 percent of the federal poverty guideline, and no one pays support that would reduce the paying parent below 250 percent of that guideline (Tier A in the lesser-of formula form described in Section 7.9.4; Tier B as a flat rule).
- No interest on child support and reset of nonconforming orders (Tier A); termination of existing arrears (Tier B: it conflicts with 42 U.S.C. § 666(a)(9) and, as to judgments owed to private parties, raises a question under Tex. Const. art. I, § 16, unless waived or authorized by Congress).
- No garnishment or other involuntary collection; enforcement only by an annual report to consumer reporting agencies (the annual report is Tier A; ending withholding is Tier B, reachable only by an exemption under 42 U.S.C. § 666(d) or a change by Congress).
- Arrears are never a basis for contempt or confinement (no federal barrier; whether a statute can bind a court's contempt power under Texas law is an open question, Section 7.9.7).
- Pregnancy and birth costs are recoverable only after DNA confirms parentage, and only against receipts (Tier A).

7.9.1 Genetic parentage, confirmed in every case (Tier A if the federal agency approves, otherwise Tier B)

The position: no man owes support for a child who is not his genetic child, confirmed by testing in all cases, not waivable by agreement, with adoption excepted. The evidence for it is the structure in Section 7.5, under which Texas establishes legal fatherhood by signature, by presumption, and by default, and continues to collect from a man after a court has terminated his relationship with a child he did not father (§ 161.005(i)).

The federal constraint is specific. A signed acknowledgment must be "considered a legal finding of paternity," challengeable after 60 days only for fraud, duress, or material mistake, with support obligations continuing during a challenge (42 U.S.C. § 666(a)(5)(D)(ii), (iii)), and an acknowledgment "must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity" (45 C.F.R. § 302.70(a)(5)(vii)). The conflict is plain. Federal law makes a signed acknowledgment, by itself, a basis for a support order, and a Texas rule that no support order may issue on an acknowledgment until a genetic test confirms it would conflict with that text. The author's position is that testing must come before support; the route this report proposes moves the test earlier in time, to before the acknowledgment is signed. The text read does not forbid the State to require or offer testing before an acknowledgment is signed, and it lets the State choose a rebuttable rather than a conclusive presumption (§ 302.70(a)(5)(iv)). That route is the author's proposal. It has not been presented to or tested with the federal child support agency, and whether the agency would approve a plan that conditions the signing of an acknowledgment on a test is unknown. Under it, Texas would test at the point of acknowledgment and presumption, so that the legal finding federal law protects rests on a genetic one; would make a test showing non-paternity a ground to vacate at any time, rather than only within two years under § 161.005(e); and would end the

collection of arrears under orders vacated for that reason. Whether vacating an order for a material mistake of fact is a "retroactive modification" barred by § 666(a)(9) has not been addressed by any federal authority read for this report, and the position should be presented to the federal agency before enactment. The adoption exception is consistent with existing law, under which an adoption order creates the parent-child relationship for all purposes.

A note on a parent who raised the child. A rule limited to genetic parents would also end the support obligations of a stepparent, or of a man who raised a child he did not father, even where the child has come to rely on them. The author's position does not seek that result. The Legislature should provide expressly that a person who has adopted the child, or who has undertaken in writing to support the child, remains bound, so that no child loses support the child relies on only because of the genetic-parentage rule.

7.9.2 No retroactive support (Tier A)

The position: support runs from the filing of the petition, not before. No federal provision read requires retroactive support, and § 666(a)(9) concerns the finality of installments once ordered, not the creation of obligations for periods before any order. This position fits within the federal text read. It requires repeal of §§ 154.009 and 154.131 and amendment of § 160.636(g). The strongest objection is that a parent who hides from a known obligation should not profit from hiding; § 154.131(d) already addresses that case, and a narrow exception for proven concealment after notice would answer the objection without restoring the general rule.

7.9.3 Pregnancy and birth costs after DNA, against receipts (Tier A)

The position: a mother may recover pregnancy and birth costs from the genetic father once testing confirms parentage, and only on documented costs. Federal law already makes bills for "pregnancy, childbirth, and genetic testing" admissible and "prima facie evidence of amounts incurred" (42 U.S.C. § 666(a)(5)(K)), and Texas already allows "an equitable portion of all of the prenatal and postnatal health care expenses" on a finding of parentage (§ 160.636(g)). The position fits within the federal floor and narrows the Texas rule to receipts.

7.9.4 The poverty thresholds (Tier A in formula form; Tier B as a flat rule)

The position: a parent collects support only when the receiving household is below 200 percent of the federal poverty guideline, and no parent pays an amount that would reduce his own income below 250 percent.

The paying-side protection is a self-support reserve, and federal law names that device: the guideline must include "a low-income adjustment, such as a self-support reserve or some other method determined by the State" (45 C.F.R. § 302.56(c)(1)(ii)). The level of the reserve is a State design choice reviewed through the plan approval process, and approval of a reserve set at 250 percent of poverty cannot be assumed. The receiving-side threshold is harder. The federal rule requires an order "based on the noncustodial parent's earnings, income, and other evidence of ability to pay," and permits consideration of the custodial parent's income only "at the State's

discretion" (§ 302.56(c)(1)(i)). A rule that no support is owed to a household above 200 percent of poverty, regardless of the payer's income, is not a computation from the payer's ability to pay, and would put the State's guidelines, and with them its plan, at risk. The compliant route is a formula: the presumptive amount is the lesser of the schedule percentage of the payer's income above the reserve and the amount needed to bring the receiving household to 200 percent of poverty, never less than zero, with health coverage for every child and a written finding for any departure. That formula considers the custodial parent's income, which the federal rule allows, and computes an amount from the payer's ability to pay, which it requires. Hybrid models that reduce the payer's percentage by the custodial parent's income exist elsewhere, according to secondary sources, though federal approval of any particular model was not confirmed. If the federal agency disapproves the design, the price is the audit penalty of § 609(a)(8) or, if Texas chose to leave the program rather than conform, the larger price described in Section 7.9.8. The quadrennial review that federal law requires, with its mandated analysis of parents below 200 percent of poverty (§ 302.56(h)(1)), is the forum in which Texas should make the case with data.

7.9.5 No interest; reset of nonconforming orders (Tier A)

The position: no interest accrues on child support, and every order that does not conform to these rules is reset. No federal provision read requires interest; repeal of § 157.265 fits within the federal text. Resetting orders is constrained by § 666(a)(9), which forbids retroactive modification but permits modification "from the date that notice of such petition has been given." The compliant route is a statutory petition: the Title IV-D agency files a review petition in every nonconforming case so that notice falls on the effective date of the new law, and each order resets from that date forward. Federal law also requires review and adjustment of IV-D orders on a three-year cycle and permits automated methods to identify and adjust orders (§ 666(a)(10)(A)), which supplies the administrative mechanism.

7.9.6 Termination of arrears (Tier B)

The position: existing arrears are terminated. Here the conflict is direct and this report does not pretend otherwise. Each installment is, by federal command, "a judgment by operation of law" and "not subject to retroactive modification by such State or by any other State" (42 U.S.C. § 666(a)(9)). Arrears owed to the receiving parent are judgments in that parent's favor, and the Texas Constitution provides that "No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made" (Tex. Const. art. I, § 16); a statute extinguishing those judgments would face a challenge under that text as well, which no source read for this report resolves. A federal demonstration is not an easy route: a child support demonstration under section 1115 "must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program" and "may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support" (42 U.S.C. § 1315(b)(1)(A), (B)). Extinguishing a debt owed to a child's household is difficult to describe as anything but a disadvantage to that

household.

What can be done within the law is substantial. Arrears owed to the State for assistance it paid can be waived by the State, as the federal child support and child welfare agencies' joint letter of July 29, 2022 invites for foster care cases, subject to the federal share. Interest can be ended prospectively. Arrears under orders vacated for genetic non-paternity can end with the orders (Section 7.9.1). Arrears accumulated under orders that exceeded ability to pay can be addressed through a demonstration designed, as § 1315 requires, to improve children's financial well-being, for example by forgiving State-owed arrears in exchange for regular current payments. The termination of arrears owed to private parties is the author's position; its route is a federal statutory change, and until Congress acts, its price is the State's plan.

7.9.7 Collection by annual credit report; no garnishment; no confinement (Tier B for ending withholding; Tier A for the rest)

The position: no wage withholding or other involuntary collection; enforcement only by an annual report to consumer reporting agencies; and arrears never a basis for contempt or confinement.

Credit reporting is itself a federal requirement: the State must report delinquent parents "periodically" to consumer reporting agencies, after notice and an opportunity to contest (42 U.S.C. § 666(a)(7)). An annual report fits within that text. Withholding does not yield so easily. Federal law requires every order to provide for withholding (§ 666(a)(8)), and requires immediate withholding on IV-D orders unless "Either the noncustodial or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding" or the parents reach "A written agreement … which provides for an alternative arrangement" (45 C.F.R. § 303.100(b)(1)). A good-cause finding must include "A written determination that, and explanation by the court or administrative authority of why, implementing immediate income withholding would not be in the best interests of the child" (§ 303.100(b)(2)(i)). Even then, withholding must begin once missed payments equal a month of support (§ 303.100(c)(1)). The compliant route therefore runs through the federal exceptions: the written agreement as the default, and withholding only after delinquency. A rule of no withholding at all conflicts with § 666(a)(1) and (a)(8), and its only federal route is an exemption under § 666(d), which requires the State to show with data that the procedure "will not increase the effectiveness and efficiency" of its program. Texas has never collected the data that such a showing would require.

License suspension can be confined without conflict, because federal law requires its use only "in appropriate cases" (§ 666(a)(16)). The Legislature can replace "shall" in § 232.008(a) with a discretionary standard tied to a finding of willful refusal by a parent able to pay, and require the agency to report suspensions and subsequent payments so that an exemption can be sought if the data warrant it.

Confinement is not a federal requirement. No provision of § 666 read for this report requires contempt, and Turner v. Rogers sets procedures that must precede confinement without

requiring that confinement be available. The obstacles are State law. The Supreme Court of Texas's holding that support is a duty and not a debt permits confinement; it does not require it. A statute can remove confinement as a remedy for nonpayment, can place on the State the burden of proving willful refusal by a parent able to pay, and can require the express ability-to-pay finding that Turner describes before any sanction issues. Whether a statute alone can bind a court's inherent contempt power under the separation of powers is a question no source read for this report resolves. An amendment to Article I, Section 18, adding to "No person shall ever be imprisoned for debt" the words "or for failure to pay child support or any sum arising from it," would settle it. Federal prosecution under 18 U.S.C. § 228 for willful nonpayment across State lines would remain available whatever Texas enacts, and Texas cannot remove it.

7.9.8 The price of exit

If Texas chose to enact every position at once, including those that conflict with federal conditions, the price is not an audit penalty. Federal law defines an "eligible State" for TANF as one whose plan includes "A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D" (42 U.S.C. § 602(a)(2)). A State that leaves the child support program puts its whole TANF block grant at risk, together with the federal reimbursement of its child support administration and its incentive payments. In fiscal year 2024 the federal share of Texas child support administrative expenditure was $230,111,822; Texas incentive payments for fiscal year 2022 were $97,071,543; and the program distributed $3,245,236,793 in current support and $1,102,684,515 in arrears payments to families (OCSS FY2024 Preliminary Data Tables). The Legislative Budget Board put the Texas TANF block grant at $486.3 million a year for 1997 to 2002. Whether a federal penalty on that scale would cross the line the Supreme Court drew in NFIB v. Sebelius, 567 U.S. 519 (2012), where the controlling opinion called a threat to "over 10 percent of a State's overall budget" "economic dragooning," has not been litigated for these titles; on the amounts read, the claim would be weak.

The price of exit is therefore real, and it falls first on the parents who depend on the program to receive support they are owed; nationally about four in five custodial parents are mothers (U.S. Census Bureau, P60-262, 2016 data). That is why this report presents the compliant routes first. Most of what the author seeks can be proposed in a form that fits the federal text (Tier A): support only from a genetic parent confirmed at the start (if the federal agency accepts testing before acknowledgment), no retroactive support, birth costs on receipts, a reserve that protects the paying parent's livelihood, no interest, orders reset from the date of a statutory petition, collection through the federal exceptions rather than by default withholding, discretion in place of command for license suspension, and no confinement for inability to pay. The remainder (Tier B), termination of private arrears and the end of all withholding, requires Congress, a federal exemption earned with data, or a decision by the Legislature that the program's conditions cost more than the program's money. That decision belongs to the Legislature, and it should be made on the numbers above, not on the assumption that the conditions cannot be questioned.

7.10 Objections

Three objections deserve direct answers.

The first is that support is the child's right, not the parent's, and that thresholds and reserves take money from children. The positions keep support for every child whose genetic parent is identified and whose household is in need, and they keep health coverage in every order. The Wisconsin evidence in Section 7.2 indicates that, among fathers below 200 percent of the federal poverty guideline, larger orders did not produce larger payments; the inference is that they produce larger debts. A reserve that keeps the paying parent employed and housed protects the child's chance of having that parent in his life, which no collection figure measures.

The second is that without confinement, parents will not pay. Texas distributes 64.1 percent of current support due, the national median (Chapter 5). No source read shows what share of that is paid because of the threat of jail. The only randomized evidence on alternatives to contempt found no gain in payment and a small loss in compliance (Skemer, 2023), and this report does not hide it. Its answer is that the remedy should be confined to parents shown to be able to pay and refusing, with the State bearing that burden, rather than abolished for them; the author's position goes further, and Section 7.9.7 states the route and the open constitutional question.

The third is that federal law forbids the changes and Texas would lose its funding. Some positions do conflict with federal conditions, and this chapter has named each conflict and its price. Most can be proposed in a form that fits the federal text. The objection is an argument for enacting the compliant positions now and for seeking the federal changes the rest require, not an argument for leaving the present system as it is.

7.11 What follows

Child support is where the State converts a custody decision into a debt and the debt, when it cannot be paid, into a sanction. The system is measured by whether money moves, and the evidence read, most of it associational, finds no measured benefit from its harshest automatic tool while that tool and confinement take parents out of work and out of their children's lives. Chapter 8 turns to the State acting not as collector but as custodian, through the Department of Family and Protective Services, where the same question governs: whether the State's intervention leaves the child with the parents the child has, and whether the State can show that it does. # Chapter 8. The State as Custodian

8.1 From the private suit to the State's own custody

The chapters before this one examined the State as referee and as creditor. In a divorce or a suit between parents, the court chooses between two people who each hold the same constitutional right, and the child support apparatus collects on the order the court enters. This chapter examines the State when it stops refereeing and takes the child itself. When the Department of Family and Protective Services removes a child, the State is no longer choosing between parents. It is displacing both of them, and it becomes the child's legal custodian, caretaker of record, and defendant in its own performance.

That change of role should raise the standard the State must meet, because the interest at stake is the one the people of Texas wrote into their Bill of Rights on November 4, 2025: “a parent has the responsibility to nurture and protect the parent’s child and the corresponding fundamental right to exercise care, custody, and control of the parent’s child.” Tex. Const. art. I, § 37. Chapter 1 showed that the amendment names no standard of proof and that the Supreme Court of Texas has so far declined to supply one, leaving “a more robust discussion of this new provision” for “another day.” In re K.N., No. 24-0881, slip op. at 17 to 18 (Tex. June 5, 2026). The removal statutes are the first place the Legislature can give the amendment operational content, because they are the place where the State, not a private party, asks a court to separate a parent from a child.

The argument of this chapter proceeds in five steps. It reads the removal and review statutes as written. It sets them beside the federal law that finances them and shows that federal law fixes what a court must find, not how much proof it must require. It reports what the strongest causal research says about removal, in both directions. It measures the Texas system against its own data and the federal government’s review. It then states the author’s recommendations: commission an independent audit of the Child Protective Services division and, on its findings, transition to a transparent system under a plan fixed by statute, and raise the proof required before the State may take a child. Family Code text in this chapter is the Legislature’s text rendered Dec. 13, 2025.

8.2 The removal law as written

8.2.1 Three doors into State custody

The Family Code gives the State three ways to take a child. The first is a petition filed before removal and an emergency order issued without notice to the parent. The second is possession taken in an emergency with no order at all. The third is the full adversary hearing that must follow either of the first two.

Under the first route, a governmental entity’s original suit asking to take a child “without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution” of six things: an immediate danger to the child’s physical health or safety, or that the child “has been a victim of neglect or sexual abuse”; that continuation in the home would be contrary to the child’s welfare; that there is no time for a full adversary hearing; that an order removing the alleged perpetrator or a protective order would not protect the child; that placement with a relative or designated caregiver was refused, impossible in the time available, or dangerous; and that reasonable efforts were made to prevent removal. Tex. Fam. Code § 262.101(a). The affidavit must describe those efforts “with specificity in a separate section.” Id. § 262.101(b). The court that issues the emergency order must find the same six things. Id. § 262.102(a).

Under the second route, a Department representative, a law enforcement officer, or a juvenile probation officer may take a child without any court order “only” on listed conditions. Id. § 262.104(a). The first is “personal knowledge of facts that would lead a person of ordinary

prudence and caution to believe that there is an immediate danger to the physical health or safety of the child." Id. § 262.104(a)(1). Three of the five conditions, however, rest on "information furnished by another that has been corroborated by personal knowledge of facts." Id. § 262.104(a)(2), (4), (5). The court must then hold an initial hearing by the first business day after possession, or no later than the third business day if the court is unavailable, and must return the child if the hearing is not held in time. Id. § 262.106(a), (c). That hearing "may be ex parte and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable." Id. § 262.106(b).

Under the third route, every removal leads to "a full adversary hearing" no later than the fourteenth day after the child was taken, subject to short extensions for counsel. Id. § 262.201(a), (e), (e-1). At its conclusion the court "shall order the return of the child" unless it "finds sufficient evidence to satisfy a person of ordinary prudence and caution" that there was a danger to the child caused by an act or failure to act of the person entitled to possession, that "the urgent need for protection required the immediate removal of the child" and reasonable efforts were made to prevent it, and that "there is a substantial risk of a continuing danger if the child is returned home." Id. § 262.201(g). If the court keeps the child, it must "describe in writing and in a separate section" the reasonable efforts made and the continuing danger found. Id. § 262.201(g-2).

8.2.2 What the standard measures

The phrase that governs every one of these steps is the same: facts or evidence sufficient "to satisfy a person of ordinary prudence and caution." It appears in the affidavit requirement, in the warrantless-possession conditions, and in the standard for keeping the child after the adversary hearing. It does not appear in the Code's standard for terminating the relationship, which is "clear and convincing evidence." Id. § 161.206(a). Nor is it the preponderance of the evidence that governs suits affecting the parent-child relationship unless the Code provides otherwise. Id. § 105.005. On this report's reading of the text, it is a standard about what would lead a cautious person to believe something, and its words describe a state of reasonable concern rather than a measured quantum of proof. No case construing § 262.201(g) was read for this report, and the reading is offered as the author's argument from the words, not as a statement of how the courts have applied them.

The point is not that the phrase is meaningless. It is that the Code frames as reasonable belief, rather than as proof, the decision that separates a child from a parent for the life of the case, and reserves its demanding formulation for the end of a case that, by then, has run for a year under orders entered on the weaker one. A child who has spent twelve months in substitute care on a finding of reasonable concern arrives at the termination trial with a record built on that finding. The demanding standard at the end of the case protects the final order; it arrives after the decision that shaped the record has already been made.

8.2.3 What the Legislature has already conceded

The Legislature has repeatedly recognized that the evidence offered at removal can be thin, and

it has answered each instance with a narrow patch rather than a general standard. It has forbidden possession "based solely on the opinion of a medical professional under contract with the Department of Family and Protective Services who did not conduct a physical examination of the child." Id. § 262.104(c); see id. § 262.102(b-1). It has required the court at the adversary hearing to "consider the opinion of a medical professional obtained by the child's parent." Id. § 262.201(i-1). It has required a sworn affiant with personal knowledge for the petition, a separate written section describing the efforts to avoid removal, and written findings when the child is kept. Id. §§ 262.101(a), (b), 262.107(c), 262.201(g-2). Read as this report reads them, each of these provisions concedes that the ordinary process could remove a child on an opinion no one tested, an effort no one described, or a danger no one specified. A Code that must forbid each failure by name suggests what its general standard permits.

8.2.4 The definitions, read as text

The definitions that frame every investigation are in Section 261.001. They are stated here as text and are applied to no one. "Abuse" includes mental or emotional injury "that results in an observable and material impairment in the child's growth, development, or psychological functioning," and physical injury "that results in substantial harm to the child, or the genuine threat of substantial harm." Id. § 261.001(1)(A), (C). "Neglect" since 2021 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," followed by enumerated examples. Id. § 261.001(4). The definition excludes failure to provide food, clothing, or shelter "caused primarily by financial inability unless relief services had been offered and refused." Id. § 261.001(4)(A)(ii)(c).

Two observations follow from the text alone. First, the definition of emotional abuse is written in terms of an observable and material impairment in a child's functioning; it describes a harm, not an actor. The developmental literature reviewed in Chapter 2 shows that disruption of a child's primary caregiving relationships is among the most consistent predictors of exactly such impairment. Whether a given removal produces that harm in a given child is a question for evidence in that case, and this chapter does not answer it for anyone. What the text establishes is that the Code already names the harm the State must avoid causing when it intervenes. Second, the 2021 neglect definition raised the threshold for intervention by requiring "blatant disregard" and an actual harm or immediate danger. The federal review discussed in Section 8.6 linked the fall in Texas foster care entries to that change. The Legislature has therefore already raised the definitional threshold for intervention once, in 2021, though no source read for this report measures whether that change left children less safe. It has not raised the evidentiary standard by which a court decides whether the threshold is met.

8.2.5 Reports, false reports, and confidential files

Removal begins with a report. A person who, "with the intent to deceive, … knowingly makes a report" under the chapter "that is false" commits a state jail felony, a third-degree felony on a

repeat conviction; the county prosecuting attorney prosecutes; a convicted reporter must pay the falsely accused person's fees and costs; and the person is liable to the State for a civil penalty of $1,000 that the Attorney General "shall" pursue. Id. § 261.107(a), (c) to (e). A court may restrict a reporter's access to the child on a finding that a report "was false or lacking factual foundation." Id. § 261.107(b). The Code thus already punishes knowing falsity. What it does not do is publish how often the provision is used, a gap Chapter 11 takes up.

The investigation that follows is closed to the public and largely closed to the family. The report, the reporter's identity, and "the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation" are confidential and "not subject to public release under Chapter 552, Government Code." Id. § 261.201(a). A court may order disclosure after notice, hearing, and in camera review, if disclosure is "essential to the administration of justice" and not likely to endanger the child, the reporter, or other participants. Id. § 261.201(b). The Department must, on request and subject to its rules, give a parent the information about the reported abuse or neglect after editing it. Id. § 261.201(g). Section 8.6 reports how long that takes in practice.

8.3 The clock and the federal bargain

8.3.1 The Texas review schedule

Once the Department is appointed temporary managing conservator, the Code runs a fixed schedule. A status hearing must be held within 60 days to review the child's status and service plan. Id. § 263.201(a). An initial permanency hearing must be held within 180 days, and the court must set a final hearing on a date that allows a final order before dismissal. Id. § 263.304(a), (b). At each permanency hearing the court must review compliance with the service plan and "the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care." Id. § 263.306(a-1)(4). And unless trial has begun or an extension is granted, on "the first Monday after the first anniversary" of the temporary order the court's jurisdiction "is terminated and the suit is automatically dismissed without a court order." Id. § 263.401(a). An extension of up to 180 days requires a finding of "extraordinary circumstances" and that continuing the Department's conservatorship is in the child's best interest. Id. § 263.401(b).

8.3.2 What federal law requires

Federal financing law sets a parallel schedule. A Title IV-E state plan must provide that reasonable efforts be made to prevent removal and to reunify, with the child's health and safety "the paramount concern," and excuses those efforts only after specified findings such as aggravated circumstances. 42 U.S.C. § 671(a)(15)(A) to (F). Foster care maintenance is payable only if the removal followed a voluntary placement agreement or "a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts … have been made." Id. § 672(a)(2)(A). The implementing regulation is exacting about timing and form. The contrary-to-the-welfare finding

must appear “in the first court ruling that sanctions (even temporarily) the removal”; the reasonable-efforts-to-prevent-removal finding must be made within 60 days of removal; each finding must be explicit, made case by case, and stated in the order; and affidavits, nunc pro tunc orders, and orders that merely cite State law are not accepted. 45 C.F.R. § 1356.21(b)(1), (c), (d). A missed finding makes the child ineligible for federal maintenance for that entire stay.

The federal clocks run alongside. A permanency hearing is required no later than 12 months after the child is considered to have entered foster care, and at least every 12 months after. 42 U.S.C. § 675(5)(C)(i). When a child has been in foster care for 15 of the most recent 22 months, the State must file or join a petition to terminate parental rights, unless the child is with a relative at the State’s option, the agency has documented “a compelling reason” that filing is not in the child’s best interests, or the State has not provided the services the case plan deemed necessary for safe return. Id. § 675(5)(E)(i) to (iii).

8.3.3 What federal law does not require

Federal law fixes what a court must find at removal and when it must find it. It sets no evidentiary standard for that finding. Neither Section 672 nor Section 1356.21 says how much proof the court must require before concluding that continuation in the home is contrary to the child’s welfare. The consequence for legislative design is direct. Texas may raise the standard of proof for removal to clear and convincing evidence, require that every finding rest on testimony subject to cross-examination, or require that the specific efforts be named, and it remains eligible for Title IV-E so long as the first order sanctioning removal contains the two federal findings in explicit, case-specific words. A reform that adds a findings checklist to the emergency order would protect federal dollars rather than risk them, because the documentation rule, not the evidentiary standard, is where a State loses reimbursement.

The federal termination clock is likewise weaker than it is often described. It mandates a filing, not a termination, and its third exception treats the State’s own failure to deliver promised services as a reason not to seek termination. Texas’s automatic one-year dismissal under Section 263.401 is stricter than anything federal law requires. A Texas rule that ties termination to proof that services were actually delivered would sit inside the federal scheme, which already contemplates it.

8.4 The standard Congress chose for Indian children

Federal law already demands, for one class of children, the protections this chapter recommends for all of them. In a State proceeding to place an Indian child in foster care, “no foster care placement may be ordered … in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” 25 U.S.C. § 1912(e). Termination requires that determination “beyond a reasonable doubt.” Id. § 1912(f). The party seeking removal must show “active efforts” to prevent the breakup of the family, and an indigent parent has a right to appointed

counsel in any removal, placement, or termination proceeding. Id. § 1912(b), (d). Where a State law gives the parent more protection than the Act, the State standard governs. Id. § 1921.

The Supreme Court sustained the Act against Article I and anticommandeering challenges brought by Texas and other parties in Haaland v. Brackeen, 599 U.S. 255 (2023). The Court held that Texas lacked standing for its equal protection and nondelegation claims, so those questions were not decided on the merits. What was decided is enough for present purposes: a clear-and-convincing removal standard, supported by qualified expert testimony, and a reasonable-doubt termination standard are administrable in Texas courts, because Texas courts apply them now whenever the child is an Indian child.

Two limits must be stated. The Act's definition of a "child custody proceeding" excludes an award of custody to one of the parents in a divorce, 25 U.S.C. § 1903(1), so the Act is a model for dependency proceedings and not for private custody. And the strongest contrary argument is that Congress adopted these standards in response to a specific finding about Indian families, and that the same standard applied to all children would slow protective removals. No outcome study comparing removal standards was found in the sources read. The answer is therefore not empirical but structural: the State already operates both standards side by side, and if the higher standard endangered children, the Legislature would expect to see that danger in the cases where it applies.

The constitutional floor confirms that the higher standard is permitted. Santosky v. Kramer held that "before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." 455 U.S. 745, 768 (1982). The words "at least" set a minimum. The Court reached that minimum by weighing the private interest, the risk of error and the value of added safeguards, and the government's interest, Mathews v. Eldridge, 424 U.S. 319, 335 (1976); Santosky, 455 U.S. at 754 to 755, and it observed that "until the State proves parental unfitness, the child and his natural parents share a vital interest in preventing erroneous termination." Id. at 760. Santosky is a termination case, and the Court has not extended its holding to removal. A legislature that raises the removal standard is therefore making a policy choice the Constitution permits, not obeying a command the Constitution has already issued. The chapter says so because the argument for the choice is strong enough not to need the overstatement.

8.5 What removal does to the child at the margin

8.5.1 The wrong comparison and the right one

The question a legislature must answer about removal is not whether children who enter foster care do worse than other children. They do. A systematic review of 32 studies found that foster care alumni fare worse than the general population in education, employment, income, housing, health, and contact with the criminal justice system (Gypen et al., 2017). Among 70,456 California adults, a childhood history of foster care was associated with receipt of disability insurance or inability to work in the past year (odds ratio 2.47, 95 percent confidence interval 2.13 to 2.86), and the authors state that their design cannot establish causation

(Zlotnick, Tam & Soman, 2012). These are Grade C findings. They describe groups, and they are confounded by the maltreatment that preceded placement. They cannot tell a legislator whether removal caused any of the difference.

The policy question is narrower and harder: for a child whose case could reasonably go either way, does removal leave that child better or worse off than remaining at home? That child is the one a change in the legal standard would affect. The child whom every investigator would remove is not the subject of this debate, and nothing below concerns that child.

8.5.2 The natural experiment

Economists have answered the narrower question with a natural experiment. In several States, reports are assigned to child protection investigators by rotation, and investigators differ in how readily they recommend removal. Two similar children may meet different fates only because of which investigator drew the case. Comparing outcomes across investigators identifies the effect of placement for the marginal child: the child an investigator inclined to remove would place, and an investigator inclined to keep the family together would leave at home. These designs support causal inference for that margin (Grade A for the marginal effect in the State and era studied). They describe group averages for a defined margin, and none predicts the effect of removal for an individual child.

8.5.3 Illinois: harm

The first studies found harm. Using Illinois investigations of school-age children on Medicaid from 1990 to 2001, Doyle (2007, pp. 1599 to 1601) found that for marginal cases, placement raised juvenile delinquency by 35 percentage points (standard error 14) against a mean of 17 percent, and lowered average quarterly earnings by $1,296 (standard error $626) against a mean of $1,044. His estimates for teen motherhood and employment pointed the same way but were not significant at the 5 percent level, and he cautioned that the marginal estimates are large and imprecise. He concluded that “children on the margin of placement tend to have better outcomes when they remain at home, especially older children.” Extending the design to adult crime, Doyle (2008) found that marginal children placed in foster care were two to three times more likely to enter the adult criminal justice system, in the working-paper version of the study.

8.5.4 Michigan and Rhode Island: gains

Later studies using the same design found gains. Gross and Baron (2022) studied Michigan investigations from 2008 to 2016 and found that foster care “improved children’s safety and educational outcomes,” with gains that “emerged after children exited the foster system when most were reunified with their birth parents.” In the working-paper version read, removal reduced the chance of being an alleged victim in a later investigation by 13.2 percentage points (standard error 4.4), which the authors describe as a 52 percent reduction, and raised school attendance; the test-score and juvenile-court estimates were positive but not significant. Following the Michigan children to age 19, Baron and Gross (2025) found that placement

reduced arrest by 24.9 points (standard error 5.9), conviction by 28.0 points (standard error 5.7), and incarceration by 20.8 points (standard error 4.8), with the effects concentrated among children aged 6 to 11 at investigation. Bald, Chyn, Hastings and Machelett (2022) studied Rhode Island children investigated before age six and found that removal significantly raised test scores and reduced grade repetition for girls, with no detectable effect for boys. Several of these estimates were read in working-paper versions, and the magnitudes in the Rhode Island study changed between versions; the direction did not.

The Michigan crime study carries a methodological lesson that should govern every statistic a legislator hears. In the same data, the simple association between placement and arrest was positive: placed children were about four points more likely to be arrested. The causal estimate for marginal children was negative and large. The naive comparison and the causal estimate pointed in opposite directions (Baron & Gross, 2025). A figure comparing foster alumni with the general population, however often it is repeated, does not show that removal caused the outcome, and this chapter does not use such figures for that purpose.

8.5.5 Sweden and British Columbia: the oldest children and the least family-like care

The newest causal evidence warns about older children and institutional care. Using random assignment of judges in Swedish court-ordered removal cases from 2001 to 2019, Helénsdotter (in press) found that removal of the marginal child raised mortality by age 19 by 6.8 percentage points (standard error 3.05), driven mainly by suicides during placement, and also raised psychiatric hospitalization and crime. The sample was older, about 29 percent of petitions concerned the child's own behavior, and about half of the children were in group or institutional care within six months. In British Columbia, placing males aged 16 to 18 into care decreased or delayed high school graduation and increased income assistance receipt, and the authors concluded that "it also matters which, and how, children are taken into care" (Warburton, Warburton, Sweetman & Hertzman, 2014).

8.5.6 Why the studies disagree, and what follows

The disagreement is real, and the authors of these studies have explained it rather than smoothing it over. Three of them, with a fourth co-author, wrote that "foster care placements in Illinois in the 1990s were substantially longer and less stable than recent placements in Michigan" (Bald, Doyle, Gross & Jacob, 2022, read as NBER Working Paper 29906). Michigan children stayed about nineteen months on average and nearly all had left within two years, most of them reunified. Age matters: the Michigan gains were driven by children aged 6 to 11, the Rhode Island gains by girls under six, and the Swedish and British Columbia harms by adolescents. And the Michigan evidence points to a mechanism in the parents: placement reduced the birth parents' later arrests by 8.3 points, an 85 percent reduction (Baron & Gross, 2025). Removal followed by short care and reunification with parents who changed is a different intervention from removal followed by long and unstable care.

Each estimate is a local average treatment effect for one State and era, and the margin moves when practice changes. Several of the strongest results are working papers or accepted

manuscripts. The precise statement the evidence supports is therefore this: the causal research does not support a general claim that removal harms children, and it does not support a general claim that removal helps them. It shows that the effect of removing a marginal child depends on what the State does after removal: how long the child stays, how stable the placement is, whether the setting is a family, how old the child is, and whether the parents receive what they need to change.

That finding has a sharp implication for Texas. The variables on which the outcome of removal depends are not the variables the removal standard controls. They are the variables the State's custodial performance controls. A statute that changes the threshold for removal without changing the quality and duration of care changes who crosses the threshold, not what happens to them afterward. The next section therefore measures what happens to them afterward in Texas.

8.6 How the State performs as custodian

8.6.1 The federal review

In the 2024 federal Child and Family Services Review, the Children's Bureau found Texas in substantial conformity with none of the seven outcomes it measures, the same result as in 2016. Substantial conformity requires 95 percent of reviewed cases to achieve the outcome, and the review drew 100 cases: 60 in foster care, 30 in-home, and 10 alternative response. Texas achieved Permanency Outcome 1, permanency and stability for children in care, in 25 percent of cases, the lowest of the seven. The reviewers found that maltreatment of children in foster care occurred at 18.42 victimizations per 100,000 days in care in Texas against 9.07 nationally, a rate statistically worse than national performance. The same report found that recurrence of maltreatment within 12 months was 6.6 percent in Texas against 9.7 percent nationally, statistically better. A result of none of seven is also the national pattern: no State has passed the review in any round (Abbott et al., 2025), and Texas matched its own 2016 result, so the finding does not by itself set Texas apart. The specific measures above are where the comparison with the nation is informative. Both recurrence and foster care safety figures are stated because a reader entitled to the first is entitled to the second (Children's Bureau, 2024).

The review recorded that entries into Texas foster care fell from more than 18,000 in 2019 to about 8,500 in 2023 and linked the fall to September 2021 legislation that redefined neglect and limited removals to immediate danger. It reported reunification at about 41 percent in Texas against 48 percent nationally. It found that Texas pleads termination of parental rights in the alternative at the first petition in every case, stated that the practice "does not afford parents proper due process," and rated the related systemic item an area needing improvement. And it found that permanency indicators could not be calculated for three reporting periods because of data quality problems in the State's federal submissions. The sample is small and structured, the 2021 change in the neglect definition altered the counts, and Round 4 may not be strictly comparable with earlier rounds.

The review also measured the State's treatment of fathers. Among 23 reviewed foster care

cases in which visits with the father applied, 26 percent of the children never visited their father and a further 39 percent visited him less than once a month; 13 percent saw him weekly. The agency made concerted efforts to sustain the child's relationship with the father in 48 percent of applicable cases against 56 percent for mothers, and assessed the father's needs in 47 percent of applicable cases against 73 percent for mothers. The reviewers wrote that "fathers were less engaged by the agency in the development of children's case plans." These are small samples, they describe agency practice in foster care rather than private custody, and the report does not separate the agency's conduct from fathers' absence before removal. Within those limits, the federal sample shows the State's own custodial system doing less to keep a child connected to a father than to a mother. Chapter 2 showed why that connection matters to the child.

8.6.2 The Department's own account

The Department's Self-Evaluation Report to the Sunset Advisory Commission, dated Aug. 31, 2025, is the agency's own account, and its most consequential admissions concern due process. Of Child Protective Investigations cases appealed in fiscal year 2024, 55 percent were not upheld, and the average internal review took 87 days (Texas Department of Family and Protective Services, 2025, pp. 232 to 233; cited below as DFPS). Appeals rose nearly 75 percent in a single year and left more than 2,000 cases in backlog by February 2025 (p. 233). The Department's own conclusion is that "this percentage merits a review of the statewide disposition processes" (p. 232), and it asks the Sunset Commission to consider up-front due process in all qualifying cases, a three-year window to request review in family cases in place of 45 days, and an internal expungement process (p. 235). The rate describes appealed cases only. The Department states that "a small portion of findings are appealed" and gives no count, so the share of all findings that would fail on review cannot be computed from this source, and appellants may be a selected group. What the figure establishes is narrow and firm: in fiscal year 2024, a finding tested on appeal was more often not upheld than upheld, and the parent who tested it waited months while it stood.

Families waited an average of 506 days in fiscal year 2024 to receive the records the Department holds about them, and former foster youth waited 407 days, while requesters with a subpoena, court order, or discovery request waited 33 days (p. 233). The statute directs the Department to provide the edited record to a parent on request. Tex. Fam. Code § 261.201(g). It does not say when, and the Department's own figures show what the silence costs: a parent seeking the file on which the State acted waits fifteen times longer than a litigant with a subpoena.

The Department reports that caseworker turnover in Conservatorship (CVS) reached 54.08 percent in fiscal year 2024, and its appropriations request reports investigations caseworker turnover of 30.65 percent for fiscal year 2025 (DFPS, 2025; DFPS, 2026, pp. 57 to 58). A child whose caseworker changes more than once a year experiences the State as a sequence of strangers. The report also records that an appropriations rider bars the use of general revenue to pay attorneys for parents and children in conservatorship suits except by emergency

declaration (DFPS, 2025). Counties paid $62,100,900 for parent and child attorneys in these cases in fiscal year 2024, $2.02 per resident, with no state funding (Texas Indigent Defense Commission, 2024). The State that brings the suit pays for its own lawyers and caseworkers and has written into its budget that general revenue will not pay, absent an emergency declaration, for the lawyers of the parents it sues or of the children it takes.

8.6.3 The system in counts

The open data show a smaller system in which reunification has shrunk with it. Statewide removals fell from 20,685 in fiscal year 2018 to 9,220 in fiscal year 2024 and stood at 10,011 in fiscal year 2025. Children in substitute care on Aug. 31 fell from 27,875 in 2020 to 16,866 in 2025. Completed investigations fell from 163,855 in fiscal year 2023 to 136,650 in fiscal year 2025, and confirmed victims numbered 51,985 in fiscal year 2025, about 23 percent of alleged victims. Confirmation is an agency finding by a preponderance of the evidence, not a court adjudication. Of 9,876 exits from Department custody in fiscal year 2025, 3,223, or 32.6 percent, were reunifications with family; the reunification share held between 28.9 and 34.4 percent each year of the decade, so the number of children returned to a parent fell from 6,739 in fiscal year 2019 to 3,223. Children who went home had spent an average of about 14 months in custody; children adopted by non-relatives about 32 months; and youth who aged out about 53 months (computed from DFPS open data). The Department itself calls reunification “the preferred outcome when children enter conservatorship” (DFPS, 2025, p. 150).

These are counts and averages, not causal estimates. The decline in removals is consistent both with the Department’s account, that family-preservation policy succeeded, and with the reading that earlier removals included children who need not have been removed. No source read can choose between them. What the counts do establish is that the decline in entries has not been accompanied by any rise in the share of children returned to a parent, which is the outcome the agency names as its own first preference, and that Texas children who are removed and later reunified spend more than a year in State custody first. The causal evidence in Section 8.5 identifies length and stability of care as the variables on which the effect of removal turns.

8.6.4 The Sunset calendar

The Sunset review is the venue in which these findings will be tested. As of Oct. 6, 2026, the Sunset Advisory Commission had published no staff report on the Department; the Self-Evaluation Report was the only document posted for the review. The Commission’s calendar lists public testimony on the Department for Nov. 18 and 19, 2026 and the Commission’s decision for Dec. 15 and 16, 2026, both marked tentative. A Department of Family and Protective Services Sunset bill follows in the 90th Legislature. Every recommendation in this chapter is addressed to that Commission as well as to the Legislature.

8.7 The custodian as defendant

8.7.1 M.D. v. Abbott

The State has been in federal court over its custodial performance since 2011. In M.D. v. Abbott, filed on behalf of children in the State's permanent managing conservatorship, the district court held in 2015 that Texas's management of foster care violated those children's substantive due process rights, and the Fifth Circuit affirmed liability in part in 2018. M.D. v. Abbott, 907 F.3d 237 (5th Cir. 2018). On Oct. 11, 2024, a Fifth Circuit panel held that a later contempt order was criminal in character, that the fines violated the State's sovereign immunity, and that the State had substantially complied with the remedial orders at issue, and it ordered the case reassigned to a different district judge. M.D. v. Abbott, No. 24-40248 (5th Cir. Oct. 11, 2024). The panel's opinion recorded that court monitors agreed with the disposition in 95 percent of 954 closed investigations, and that compliance with a 30-day order rose from 21 percent in 2019 to 73 percent in 2021 to 2022 and 84 percent in 2022 to 2023. The panel also counted 38 deficient investigations involving 13 children in the period reviewed, and the plaintiffs measured 55 percent of 69 provider investigations as deficient over four months. Rehearing en banc was denied 9 to 5 on Feb. 11, 2025, and the Supreme Court denied certiorari on Oct. 6, 2025.

The litigation therefore supports two statements, and both must be made. A federal court found, and the Fifth Circuit affirmed in part, that the State's management of children in its permanent custody violated the Constitution. The Fifth Circuit later found that the State had substantially complied with the specific remedial orders at issue and that the contempt sanctions exceeded the court's power. The case concerns children already in permanent State custody, not custody between parents and not the removal decision. Its relevance here is that it establishes, by judicial finding, that the State's performance as custodian is not presumed adequate merely because the State is the custodian.

8.7.2 An institution investigating itself

The State's juvenile justice agency supplies a parallel record. On Aug. 1, 2024, the United States Department of Justice reported reasonable cause to believe that the Texas Juvenile Justice Department violates the Eighth and Fourteenth Amendments, the Individuals with Disabilities Education Act, and the Americans with Disabilities Act. Pages 1 to 43 of the 72-page report were read for this study. Among the findings in those pages, 63 percent of audited staff turned off body-worn cameras during required activities, and the agency's investigations of abuse were conducted by its own Office of Inspector General. The findings are the Department of Justice's findings of reasonable cause, not a court judgment, and the Texas Juvenile Justice Department disputes them. The report concerns a different agency from the one this chapter addresses. It is cited as an illustration only, and not as evidence about the Department of Family and Protective Services, for one structural point: when an institution that holds children investigates allegations against itself, the record it keeps is the record it chooses to keep.

The State Auditor reached a related conclusion about the Department's own contractors,

finding that it did not provide sufficient oversight of its Single Source Continuum Contractors to verify critical placement information and selected health and safety requirements (State Auditor's Office, Report 23-012, summary). The Legislative Budget Board found that those contractors were never required to report expenditures, with one incentive of $393,177 and no remedies in the contracts (Legislative Budget Board, 2026).

8.8 Spending against outcomes

The State's investment in this system can be set beside what the system produces. Table 8.1 states the money as the State's own budget documents report it, and Table 8.2 states the outcomes as federal reviewers and the Department report them.

Table 8.1. What Texas spends on child protection

Item	Amount	Period
DFPS total expenditures	$2,547,844,437	FY 2024
Of which CPS and CPI program spending	$1,654,519,060 (64.94 percent)	FY 2024
Prevention programs	$170,155,031 (6.68 percent, computed)	FY 2024
Foster care payments	$532,391,312	FY 2024
Adoption subsidy and permanency care assistance	$311,948,688	FY 2024
Federal funds as a share of DFPS revenue	$896,904,628 (35 percent; the Department reports the share was 52 percent twelve years earlier)	FY 2024
DFPS total expenditures	$2,528,420,361	FY 2025
CPS Direct Delivery; Foster Care Payments; Adoption Subsidy appropriations	$2,047.6 million; $1,002.5 million; $507.6 million	2026 to 2027 biennium
Children Without Placement transfers and supplementals listed	$150.0 million	FY 2022 to FY 2026
Federal Title IV-E foster care claims	$174.3 million; 27.9 percent of children in placement IV-E participants (41st of 50)	FY 2023
County spending on attorneys for parents and children in CPS cases	$62,100,900; no state funding	FY 2024

Source: DFPS Self-Evaluation Report (2025), pp. 49 to 55; DFPS Legislative Appropriations Request FY 2028 to 2029, Schedule 2.A; LBB Strategic Fiscal Review 2026; Children's Bureau Form CB-496 FY 2023; Texas Indigent Defense Commission FY 2024. Rows from different

schedules are not additive.

Table 8.2. What the system produces

Measure	Texas	Comparison	Source
Federal outcomes in substantial conformity	0 of 7	0 of 7 in 2016	CFSR Round 4 (2024)
Permanency and stability achieved	25 percent of cases	95 percent required	CFSR Round 4
Maltreatment in foster care per 100,000 days	18.42	9.07 national	CFSR Round 4
Recurrence within 12 months	6.6 percent	9.7 percent national	CFSR Round 4
Reunification	about 41 percent	about 48 percent national	CFSR Round 4
Reunification share of exits	32.6 percent (3,223 of 9,876)	6,739 reunifications in FY 2019	DFPS open data, FY 2025
Appealed investigation findings not upheld	55 percent	appealed cases only	DFPS SER, p. 232
Days for a family to receive its own records	506	33 for a subpoena	DFPS SER, p. 233
CVS caseworker turnover	54.08 percent		DFPS SER

Source: as listed in each row.

Read together, the tables support three statements and forbid a fourth. First, the State spends about $2.5 billion a year on this system, of which prevention is under 7 percent, and it has borne a rising share of the cost itself as the federal share fell from about half to about a third. Second, on the federal government’s measure the system met none of its seven outcomes in 2016 or 2024, and on the one safety measure most directly under the State’s control as custodian, maltreatment of children while in its care, it performed at about twice the national rate. On recurrence of maltreatment within twelve months it performed better than the national figure, 6.6 percent against 9.7. Third, the Legislative Budget Board found no regular reporting that ties the cost of children without placement to the number of children, and contractors who held children were never required to report what they spent. The fourth statement, that the money is wasted, is not made here. No source read measures waste or computes cost per outcome, and a finding of waste would require exactly the cost-to-outcome reporting the State does not produce. The accurate statement is stronger for being accurate: the State cannot show what its child protection dollars buy, and it met the federal standard on none of the seven outcomes the federal review measures.

8.9 The recommendation: audit the CPS division, then transition

8.9.1 Why an audit and a transition, and not another repair

The author recommends that the Legislature order an independent, phased audit of the Child Protective Services division of the Department of Family and Protective Services and, on the audit's findings, transition statewide to a system built on transparency and accountability under a transition plan fixed by statute. The case for an audit followed by a transition, rather than another round of repair, rests on the record above. The none-of-seven result is also the national pattern (Abbott et al., 2025), so it is not offered as proof of failure by itself; the case rests on the specific measures in Section 8.6 and on the State's inability to show what its spending buys. The federal review found no outcome met in 2016 and none in 2024, across an interval that included federal litigation, repeated legislation, the transition to community-based care, and the 2021 redefinition of neglect. A system that has been reformed continuously for a decade and still meets none of its outcomes is not waiting for one more reform. The record is consistent with a structural cause. It does not isolate one, and the audit is how the Legislature would find out.

8.9.2 The phases

The audit and transition proceed in four phases, and the fourth begins only on the audit's findings and a transition plan fixed by statute. In the first, on enactment, every interview, evaluation, hearing, and communication between a court actor and a party in a child protection case is recorded and retained, with a child's recordings kept until the child turns 21, in a state repository open to the parents and their counsel and to the oversight bodies; parents never pay for counsel in any child protection case; and every payment to a contractor is published. In the second, an independent inspector general answering to the Legislature, and an oversight board on which no person with a financial stake in placements or fees sits, take jurisdiction over the system; a suspected crime against a child by a government actor is referred within a fixed number of days to law enforcement, the inspector general, and a randomly assigned prosecutor, and no agency may investigate, resolve, or close it itself. In the third, the independent audit described below is conducted. In the fourth, on the audit's findings, the replacement agency named in the transition plan, or by the Sunset decision, takes over caseloads region by region on a published schedule and reports, by county and year, the time to a placement decision, children without placement, reunification, time in care, maltreatment in care per 100,000 days, recurrence, monthly contact with each parent, kinship placement, the share of removals later found unsupported, and cost per child by line with every contractor payment. The court-side measures need no new mandate to begin: the Texas Judicial Council already must gather, for each trial court, "case-level information on the amount and character of the business transacted by the court" (Tex. Gov't Code § 71.035(a)), and the recommendation directs that duty to these measures for child protection cases. The 2024 federal results are the baseline. The old division sunsets after the last region transfers.

Two constraints govern every phase. Every federal finding must remain on time, so that each

first order sanctioning a removal carries the contrary-to-the-welfare finding and each reasonable-efforts finding is made within 60 days, 45 C.F.R. § 1356.21(b), (c); the transfer of each region is therefore tied to a transition order that preserves those findings, and the replacement must be the agency the Title IV-E and IV-B state plans name. And the confidentiality of investigation records under Section 261.201 is preserved: review and publication use de-identified records.

8.9.3 The independent audit

The third phase is the one most likely to be misdescribed, so its rules are stated precisely. An independent auditor examines the Department's system records, in de-identified form, for falsification of records, missed statutory deadlines, and failures of statutory duty. The audit examines the system and not individual workers, and it rests on no assumption that any worker acted wrongly.

The standards are fixed in the statute before any record is opened: a case record shown to be falsified; a missed statutory deadline such as the fourteen-day adversary hearing; a removal later found by a court to lack required findings; an audit exception; a sustained policy violation. The auditor scores documents, not reputations. The audit is de-identified throughout: it reports counts and not names, it does not review any individual worker's personnel file, and it recommends no action against any person. Where the audit finds records that indicate a possible crime, the matter is referred under existing law, which already supplies the route, and nothing in the audit creates a new referral power. The output is aggregate: the count of each flag, by region and year, published, with a three-year sunset on the audit.

The purpose is not punishment. It is measurement. The State does not know how often its own records are falsified or its own deadlines missed, because it has never counted. A system that asks the public to trust its findings should be willing to count its own.

8.10 The recommendation: raise the removal standard

The second recommendation addresses who decides, on what proof, and with what record. The author recommends five changes.

1. Removal at the full adversary hearing, and at every interim hearing that continues the State's possession, requires clear and convincing evidence of each element now listed in Section 262.201(g), in place of evidence sufficient "to satisfy a person of ordinary prudence and caution."
2. Ex parte removal, and the emergency order that authorizes it, rests on the sworn statements of the actual fact witnesses to each fact relied on, not on information furnished by another and relayed through a caseworker's affidavit; the affiant who swears to a fact is available for cross-examination at the adversary hearing.
3. A parent may demand a jury at the initial adversary hearing, beginning with a pilot in a small number of counties, with cost and effect on the fourteen-day schedule measured before the right extends statewide.

4. Termination of parental rights requires proof beyond a reasonable doubt.
5. When a case ends with the child returned to the parent, the parent's name and all related information are deleted from the Department's central registry.

Each change has a foundation already in law. The clear-and-convincing removal standard and the reasonable-doubt termination standard are the standards federal law imposes, and Texas courts apply, in every Indian child's case. 25 U.S.C. § 1912(e), (f). Santosky set clear and convincing evidence as the minimum for termination, not the maximum. 455 U.S. at 768. The fact-witness rule builds on text the Code already contains. The petition affidavit must already be "sworn to by a person with personal knowledge," § 262.101(a), and a contract physician's untested opinion may not alone support possession, § 262.104(c). The recommendation requires that the personal knowledge extend to each fact relied on, and it closes the routes by which information from someone other than the affiant reaches the decision: possession "on information furnished by another that has been corroborated by personal knowledge of facts," § 262.104(a)(2), (4), (5), (b), and an initial hearing at which "proof may be by sworn petition or affidavit," § 262.106(b). The jury right exists for conservatorship at final trial, and the jury's verdict on conservatorship binds the court. Tex. Fam. Code § 105.002(c). It is almost never used: in fiscal year 2024, Texas district and statutory county courts recorded 16 jury verdicts in child protective services cases and 2 in termination cases (Office of Court Administration, 2025). Extending the right to the first hearing gives the parent a community's judgment at the moment it matters most. Its cost and its effect on the fourteen-day schedule were not measured in any source read, which is why the right is piloted in a few counties first, with both measured before it extends statewide. Registry deletion on return extends what federal law already requires for unsubstantiated cases, the prompt expungement of records in cases "determined to be unsubstantiated or false," 42 U.S.C. § 5106a(b)(2)(B)(xii), and what the Department itself asks Sunset to create, an internal expungement process (DFPS, 2025, p. 235).

For the record, plank 194 of the Republican Party of Texas 2026 Platform calls for the same five changes. The plank is a party document, not law, and it is noted here and not offered as authority for any of them.

None of the five changes depends on federal permission. Federal law requires the findings and their timing and is silent on the proof. 42 U.S.C. § 672(a)(2)(A); 45 C.F.R. § 1356.21. A State that raises the proof and keeps the findings on time keeps its Title IV-E eligibility.

8.11 Objections answered

The first objection is that replacing the CPS division leaves children unprotected. It does not, because the proposal audits and then replaces a structure, not a function, and no region transfers until the transition plan preserves every protective function. Law enforcement's authority to take a child in immediate danger remains, § 262.104(a); protective orders remain; the criminal law remains; and the replacement takes over each region's caseload only on transfer, with every federal finding kept on time. The objection assumes that the present structure is protecting children well enough that disruption is the greater risk. The federal

review, which found maltreatment of children in State care at about twice the national rate, a specific measure on which Texas differs from the nation. The none-of-seven result is the national norm and is not offered as proof of failure.

The second objection is that the removal research cuts both ways: if removal helped marginal children in Michigan and Rhode Island, a higher standard might leave some of those children at home to their harm. The objection is correct as to the research, and the chapter has stated it. The recommendations here do not rest on a claim that removal never helps a child. They concern who decides, on what proof, and with what record. The Michigan gains arose where placements were short and stable and most children went home to parents who changed; the Illinois and Swedish harms arose where care was long, unstable, institutional, or adolescent. In the author's reasoning, a higher standard of proof concentrates removal on the cases where the evidence of danger is strongest. It also moves the margin, so that some children who would be removed today, and some of whom the Michigan and Rhode Island estimates suggest would gain from removal, would stay home; no source read measures how many, and the Legislature should weigh that cost openly. The higher standard trades off marginal children in this way, and the report does not claim otherwise. And the replacement system's reporting duties are aimed at exactly the variables, length, stability, family setting, and parental change, on which the research says the outcome of removal turns.

The third objection is that Texas has already reformed: entries fell by about half after 2021. The federal review attributes that decline to the 2021 neglect definition and, in the same report, finds none of seven outcomes met in 2024. A smaller system that performs no better on the federal measures is a smaller system. It is not yet a better one.

The fourth objection is that an audit is a purge under another name. The design answers it: the audit examines system records in de-identified form, reviews no individual worker's file, names no one, recommends no action against any person, and publishes counts. A purge seeks names. This audit seeks numbers.

8.12 What follows

This chapter has shown that the State, when it takes custody of a child, acts on a standard framed as reasonable belief rather than proof, operates a system that federal reviewers found met none of its outcomes, and cannot show what its spending buys. Those failures have persisted through a decade of legislation, which raises the question of how the rules themselves are made. Chapter 9 turns to that question: who writes the rules of family procedure, who trains the judges who apply them, and whether one evidentiary standard governs every voice that seeks to influence them. # Chapter 9. Capture and the Symmetry Rule

Chapter 8 measured the State as custodian against the standards the State itself accepted, and found that the agency charged with protecting children does not meet them and cannot say what its spending buys. The chapters before it found the same pattern at every stage of the private custody case: a Code that names the child's best interest as its rule and then supplies procedures, appointments, fees, and financing that count case activity rather than preserved

relationships. A reader who has followed the argument this far is entitled to ask how a body of law with these properties came to be written and how it is sustained. This chapter answers that question from the public record alone. It states who participates in writing and teaching the rules of Texas family law, what positions the record shows them taking, and what the rules governing judicial education do and do not require. It asserts no motive. It applies one standard to every participant, including the author.

9.1 The charge, and the rule that governs this chapter

On September 15, 2026, the Senate Committee on State Affairs heard testimony on an interim charge titled Protecting the Integrity of the Judiciary. The charge reads in full: “Study attempts by public advocacy groups to improperly influence the judiciary with biased informational seminars. Identify entities attempting to influence judges with training based on skewed information. Make recommendations to ensure Texas judges remain fair and impartial and are not influenced or trained by nefarious individuals attempting to improperly impact the outcome of cases.” The day before, the same Committee heard the companion charge, Protecting Texas Families, which directs it to “Study the unnecessary burden placed on Texas children and families who suffer from inefficient or inconsistent divorce and child custody proceedings,” to identify inefficiencies “that result in unpredictable timelines, unnecessary delays, repetitive child evaluations, or other needless complications,” and to recommend procedures that “truly prioritize the best interests of children.”

The judicial-integrity charge names no entity, and this chapter does not supply one. It states first the rule by which it proceeds. The charge reaches advocacy groups on every side of family law. It reaches organizations that favor shared parenting and organizations that oppose it, family-violence coalitions and fathers’ groups, the trial bar and its critics, trainers who teach attachment science and trainers who teach the dynamics of abuse. It reaches the trainings the author has given and the trainings his allies have given. A standard that would condemn a seminar for its sponsor’s position, rather than for the evidence it presents, would fail the charge’s own test, because it would itself be training based on skewed information. The only defensible reading of the charge is that bias in a training program is a property of its content and its evidence, and that the remedy is one published standard applied to all.

The author’s interests are part of the record this rule governs. Dr. McKenzie provides Adult Attachment Interview coding, Attachment Q-Sort administration, and Trust-Based Relational Intervention training commercially. The recommendations in Chapter 6 for validated attachment measures scored by reliability-certified coders would, if enacted, create work for people with his credentials. That is why those recommendations are written as vendor-neutral standards that name no product or provider, and it is why the author has stated that he will not seek appointment under the standard he proposes. Every reader is entitled to weigh the author’s evidence with that interest in view. The same courtesy, and the same scrutiny, is extended below to every other participant.

“Capture” in this chapter has a narrow meaning. It describes a structure, not a conspiracy: a

condition in which the people who draft, lobby for, interpret, and teach a body of rules are drawn largely from those who work within it, while the people most affected by it, here children, have no organized presence at all. Nothing in that description requires bad faith, and nothing in the record read for this chapter shows any. The Texas Family Law Foundation is lawful, small, and open about what it does. Trade associations exist in every regulated field. The question is not whether participation is legitimate. It is whether the Legislature has supplied any counterweight to it, and the answer the record gives is that it has supplied none, because it has never required that the rules be measured against what happens to the child.

What follows is a method. Every statement about an organization below is a record fact: a tax filing, a lobby registration, a witness-list entry, a bill analysis, or the text of a rule. Every inference is labeled as one. Sitting legislators are not profiled. No quota, bonus, or improper motive is claimed or implied of any person or organization.

9.2 Two frames, and how far they reach

Two ideas from outside law help describe how a body of rules can drift away from its stated purpose without anyone intending the drift. Both are used here as frames, not as evidence, and their limits are stated with them.

The first is the shifting baseline. Pauly (1995), writing about fisheries, observed that each generation of scientists takes as its baseline the stock it first encountered, so that a long decline is perceived only as a series of small changes from an ever-lower starting point; his remedy was to build the historical record into the models. The piece is a one-page opinion essay with no data of its own (Grade D), and it concerns fish, not courts. Its application to Texas family law is an inference. But the inference is precise. A practitioner, judge, or evaluator who entered the field after no-fault divorce, after the standard possession order, and after the growth of the Title IV-D apparatus takes those arrangements as the normal state of things. Proposals to change them are perceived as radical departures from a baseline that is itself recent. The remedy Pauly proposed translates directly: the Legislature should require that the rules be evaluated against the record of what they were designed to do and what they have produced, which is the outcome-data recommendation of Chapter 11.

The second is the normalization of deviance. Vaughan (1996), in her study of the decision to launch the space shuttle Challenger, described a gradual process in which departures from a technical standard came to be accepted as normal because each departure had been followed by no disaster, and she found that the decisions at issue conformed to the organization's rules and culture rather than breaking them. The frame matters for a reason that is easy to miss. Vaughan's finding was not that people broke rules. It was that the rules and the culture permitted a slow acceptance of risk. That is the posture this report takes toward the Texas family courts. Chapter 4 did not find judges violating the Family Code; it found the Code permitting temporary orders without appeal, associate-judge rulings without a record, and findings only on request. Normalization of deviance describes how such permissions come to be regarded as ordinary practice, and why the people inside a system are the least likely to see

them as departures.

Neither frame proves anything about Texas. Both caution against the most common defense of the present system, that it reflects the accumulated judgment of experienced professionals. Accumulated judgment is exactly what both frames describe as vulnerable. The commonly repeated image of a frog that fails to leap from slowly heating water is not used here, because the experiment does not show what the image claims. The two frames above are drawn from serious scholarship and carry no such defect.

9.3 The Texas Family Law Foundation: what the public record shows

The Texas Family Law Foundation is the most visible organized participant in the record of Texas family legislation read for this report. What the record shows about it is modest, and it is stated here in full so that no reader mistakes its size or its legality.

The Foundation is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code, the subsection for "business leagues, chambers of commerce, real estate boards," and similar bodies; its employer identification number is 75-2879149, its address is in San Antonio, and its ruling date is September 2002. Contributions to it are not tax deductible. These facts are drawn from the IRS data rendered by ProPublica's Nonprofit Explorer, which this study read in place of the IRS search tool; the return's lobbying and event schedules could not be read, because the download of the full filing was blocked.

Its most recent return covers the fiscal year ending July 2025. It reports total revenue of $215,094 and total functional expenses of $218,969, a deficit of $3,875, against total assets of $199,224 and no liabilities. Contributions were $91,048, program service revenue $767, investment income $1,572, and net income from fundraising events $121,707, which is more than half of revenue. Executive compensation, other salaries, and professional fundraising fees are each reported as zero. The officers listed, a president, a president-elect, a vice president, a secretary-treasurer, and an immediate past president, are all reported at no compensation, as are sixteen directors. Across sixteen filings, revenue ranged from $90,193 (fiscal year ending July 2020) to $320,318 (fiscal year ending February 2017), and officer compensation was zero in every year. The Project's source register records that some of the listed directors are styled "Hon." or "Judge" in the filings; the record read does not show whether any of them was a sitting judge at the time, and this chapter draws no inference from the honorific.

The Texas Ethics Commission lists the Foundation as a lobby client in both 2025 and 2026. It reports two registered lobbyists for the Foundation in each of those years (Texas Ethics Commission lobby registration records). The Commission reports compensation only as ranges stated at registration, which are prospective and not amounts paid, and this chapter does not repeat them. Because the Form 990 runs on a July fiscal year and the Commission's reports run by calendar year, the two cannot be combined to say what share of the Foundation's spending goes to lobbying, and this chapter does not attempt it. The Foundation's own site describes a team of legislative volunteers who analyze bills and testify, and names its lobby team.

These are the facts. They describe a small association with a stable budget, no paid staff, unpaid

volunteer officers, and registered lobbyists. They contain no evidence of self-enrichment and none of illegality, and the Project's record states that none was found. The point that follows from them is structural. The body that speaks for family law practitioners in the Capitol is organized, funded, continuous across sessions, and served by volunteers who know the Code in detail. No comparable body speaks for the children whose custody the Code decides, and none could, because children do not form trade associations. A Legislature that receives expert testimony from one side of a relationship and none from the other must supply the missing perspective itself. The instrument for doing that is the evidence standard argued for throughout this report.

9.4 The positions the record shows

The Legislature records the position of every registered witness on every bill heard in committee. Those witness lists are the most reliable public evidence of what an organization supported and opposed, because they are entered by the witness and kept by the committee. This study read the House Committee on Juvenile Justice and Family Issues witness lists for the 86th Legislature's hearings of April 24 and May 1, 2019, the 87th Legislature's hearings on H.B. 867 and H.B. 4381, and the 88th Legislature's hearing of April 19, 2023 in full. It read the 89th Legislature's lists only in part, because the Legislature's site blocks automated access to the documents that hold them. The pattern stated below is therefore drawn from a sample, and is offered as such.

At the April 19, 2023 hearing, the Foundation was recorded For nine bills, H.B. 969, 1546, 2581, 2583, 2658, 2969, 3380, 4355, and 5103, and Against none. In the 86th Legislature, its lobbyists were recorded Against H.B. 922, a bill concerning divorce on the ground of insupportability; Against H.B. 2157, an equal-parenting bill; and Against H.B. 3414, a shared-parenting bill. H.B. 922 failed to receive an affirmative vote in committee on May 2, 2019. The Foundation was also recorded in support of other bills in the sessions read, among them H.B. 867, H.B. 1807, H.B. 3145, and H.B. 4381, and it supported bills on process, enforcement, and procedure that a reform-minded reader would count as improvements. The Project's synthesis of the sample is that the Foundation's recorded pattern is opposition to bills that would change the no-fault ground of divorce or the custody default and support for bills on process, fees, and enforcement. That synthesis is an inference from a sample, and it carries the limit that every sample does.

Symmetry requires the next sentence. The witness lists read also record the Texas Council on Family Violence among the registered witnesses on family bills in the sessions read. That is reported as a witness-list fact only, and this chapter draws no characterization of that organization's positions from it. The lists do not support attributing the outcome of any bill to one organization. The finding this chapter draws is narrower. Across the sessions read, the organized interests that appeared most consistently in committee on family bills were associations of the professionals and advocates who work within the present system. Parents appeared as individuals. Children did not appear.

At the September 14, 2026 Senate hearing, the Foundation testified through one of its two registered lobbyists and was recorded ON the charge, neither for nor against. An ON registration records attendance and nothing about content. The minutes contain no summary of testimony, and this study did not review the hearing video. What the Foundation argued that day is therefore not stated here.

A caution applies to the evidence that organized interests offer on these bills. A count of how many families return to court is a measure of litigation, not of children's welfare. A rule that sends more families back to court may be worse for lawyers' calendars and better for children, or the reverse; the count cannot say which. When any interest measures a proposal by its effect on the docket, the Legislature should ask what the proposal does to the child, because that is the question the Code says governs.

9.5 The fee bills

One line of legislation in the record shows most plainly how a narrow, technical, and lawful change can alter the incentives inside the family court without any outcome evidence being offered or asked for.

In the 88th Legislature, H.B. 1546 proposed to make the Family Code's attorney's-fee provisions consistent with one another. The bill did not pass. In the 89th Legislature its successor, H.B. 2524, did pass, and took effect September 1, 2025. Its effect on fee recovery is now in Family Code § 106.002, which reads, as amended by that act: "(a) In a suit or motion under this title and in a habeas corpus proceeding, the court may render judgment for reasonable and necessary attorney's fees, court costs, and expenses and order the judgment and postjudgment interest to be paid directly to an attorney. (b) A judgment for attorney's fees, court costs, and expenses may be enforced in the attorney's name by any means available for the enforcement of a judgment for debt." The same act amended other sections of the Code, including the false-report statute, § 261.107, and the interstate provision on jurisdiction obtained by unjustifiable conduct, § 152.208, each of which this report discusses in its place. The Legislative Budget Board found no significant fiscal impact to government. The bill analyses offered no data on fees awarded in Texas family cases, on who pays them, or on their effect on children, and none was required.

The stated purpose of the fee bills was consistency, and consistency in drafting is a legitimate aim. Nothing in the record suggests that anyone sought anything other than the consistency the analysis states. The structural point is different. A rule that lets a fee judgment be paid directly to counsel, and be enforced in counsel's own name by every means available to a creditor, changes who holds the enforceable interest when a family case ends. Section 105.001(a)(5) already allows a temporary order "for payment of reasonable and necessary attorney's fees, court costs, and expenses," before any finding on the merits, and Chapter 4 showed that temporary orders cannot be appealed. A parent of modest means facing a well-funded opponent now litigates in a system in which the opponent's counsel holds a creditor's remedies. Whether that improves or worsens outcomes for children is unknown, because no one

measured it before the law changed, and no one is measuring it now.

The 89th Legislature thus enacted the successor to a fee bill that had not passed in the 88th. The Code now tells a court precisely how a lawyer may collect a fee from a parent. It still does not tell the court what the best interest of the child is. That asymmetry is the shape of the record, and it is the shape a shifting baseline would predict, though the frame explains and does not prove: each change is small, technical, and reasonable on its own terms, and none is ever asked what it does to the child.

9.6 A statement of effect on children

No claim is made here about who drafted or requested any bill, and none is needed for what follows.

The remedy this chapter proposes is to require of every family-law bill the same thing the Senate's charge requires of judicial training: that the claims made for it be measured against evidence, by a standard published in advance. A statement of a bill's expected effect on children, attached to family-law bills as the fiscal note is attached to their cost, would follow naturally from the outcome data Chapter 11 recommends. The drafting expertise of the bar and of every other participant would remain fully available. What would change is that the question the Code names as primary would finally be asked of the Code's own amendments.

9.7 The Texas Conservative Coalition Research Institute staff paper

On September 14, 2026, the day of the family-charge hearing, the Texas Conservative Coalition Research Institute posted a paper titled "Texas Family Courts." By its own disclaimer it is a staff paper of the Institute. It is not a report of the House or the Senate, and nothing in this chapter should be read to suggest otherwise. The Institute's General Counsel testified ON the family charge that day, and a policy analyst registered ON.

The posted summary of the September edition presents five reform areas: docket congestion and judicial waste, addressed through "shot clock" disposition deadlines, mandatory alternative dispute resolution, and case review panels; transparency of filing requirements; wider publication of dispute-resolution options; judicial transparency and accountability, including disclosure of judges' relationships with parties; and attorney transparency and accountability. The September PDF itself was not reachable by this study's tools, and the findings below come from the Project's full read of the earlier edition, whose page numbers may not match.

In the edition read for this report, the paper proposes a disposition deadline of 12 to 18 months (p. 13 of that edition). It funds review panels with a "docket integrity fee" on parties filing an original petition, through a new Government Code section (p. 14 of that edition). It proposes disclosure of campaign contributions and a contribution moratorium. Its Appendix I, in the edition read for this report, reports Office of Court Administration data for fiscal year 2025: 282,099 family dispositions, 73.3 percent within 12 months, 82.5 percent within 18 months, and 51.1 percent beyond the six-month standard of Rule 6.1 of the Rules of Judicial Administration. And, in that edition, it lists custody evaluations among the exceptions to its proposed shot clock

(p. 13).

Several of these proposals are sound. Disclosure of relationships between judges and those who appear before them is one this report supports, and so is a clock that means something. The figures in the edition read, however, show the limit of a deadline as a reform. If 82.5 percent of family cases already close within 18 months, a deadline of 12 to 18 months governs the remaining fraction and leaves the experience of most families unchanged. And if the exemption of custody evaluations stands in the current edition, it removes from the paper's only enforceable timing proposal the one process the Senate's family charge names by name, "repetitive child evaluations." A reform that sets a clock on the docket and stops it for the evaluation measures the court's speed and exempts the part of the case the charge singles out. The docket integrity fee adds a charge on the parent who files, a cost the edition read does not weigh against the burden the charge describes.

The deeper difference lies in what is measured. A process reform is judged by how fast a case closes. A best-interest reform is judged by what happens to the child. The 2025 amendment of Government Code § 33.001(b) now treats a judge's "wilful, persistent, and unjustifiable failure to timely execute the business of the court," including failure to meet deadlines set by statute or rule, as misconduct. A clock already exists in law for a judge who wilfully ignores one; what does not exist is any measure of what the case did to the child.

9.7.1 The family-structure argument answered

The paper's one substantive research argument appears on the first page of the edition read for this report and deserves a direct answer, because it is the strongest objection in the record to this report's equal-parenting recommendation. The paper cites a set of studies, among them a meta-analysis by van Dijk et al. (2020) of 115 samples and 24,854 divorced families, O'Hara et al. (2019), and Mahrer et al. (2018), for the proposition that interparental conflict and parenting quality, not family structure or parenting-time presumptions, predict children's adjustment. This report does not characterize what any of them found beyond the paper's own summary.

The answer does not depend on disputing them. First, this report does not argue that an intact household is the measure of a child's best interest. It argues for the child's relationship with each fit parent, which is a claim about the quality and continuity of caregiving, the very variables the paper says matter. On that point the paper and this report agree, and the agreement is not small. Second, conflict and parenting quality are a mechanism; parenting time is one of the inputs to it. A parent who is excluded from the child's life cannot parent well or badly in the time he does not have, and Chapter 2 set out the randomized evidence that improving caregiving improves attachment security and child outcomes (Bernard et al., 2012; Cicchetti et al., 2006), which establishes that caregiving quality is open to change rather than fixed. Third, the designs cited in the paper are, by its own description of them, studies of association. The objection that structure research cannot isolate cause applies to them with equal force. The one study in the record that isolates the effect of custody allocation itself, by exploiting the random assignment of Swedish custody disputes to judges who differ in their propensity to award joint custody, found that joint custody among disputed, marginal cases

raised children's next national test scores by 0.47 standard deviations with no detectable increase in children's psychiatric medication use (Canessa et al., 2026). That study is a working paper, not yet peer reviewed; its estimate applies to cases where judges could reasonably differ, excluding abuse; and its joint custody is chiefly joint legal custody rather than equal time. Within those limits it is the strongest causal estimate in the record read for this report. It supports shared decision-making and bears only indirectly on equal time, and this report does not rest the equal-time presumption on it.

What follows from the exchange is that the Institute's staff paper and this report are measuring the same thing from different ends. The paper says parenting quality matters more than structure. This report agrees, and adds that the law should therefore stop severing the relationships through which parenting quality is delivered.

9.8 Judicial education: what the rules require, and what they do not

The judicial-integrity charge asks about seminars. The first question it raises is what Texas law requires of the training judges receive, and the answer, read from the stored text of the Rules of Judicial Education (updated August 18, 2025), the Government Code (rendered October 1, 2026), and the Code of Judicial Conduct (as amended through June 12, 2026), is that the law prescribes hours and topics in detail and evidence not at all.

The Court of Criminal Appeals makes the Rules of Judicial Education. A district judge or statutory county judge must complete thirty hours within a year of taking office and sixteen hours in every later fiscal year (Rule 2(a)). An associate judge under Family Code chapter 201 must complete twelve hours in the first year and twelve in each later year (Rule 4(b)). Credit is earned by attendance, one hour for each hour, and a judge who teaches at an approved program receives "credit for three times the presentation time" (Rule 8(a)). There is no examination. Programs count if they are sponsored by one of twenty listed organizations and approved by the Court's Education Committee (Rule 2(c)). The list is broad and, on its face, balanced. It includes the Texas Center for the Judiciary, the Judicial Section of the State Bar, "A local, state, or national bar association," "A professional organization devoted to improvement of the legal profession such as the Texas Association of Defense Counsel and the Texas Trial Lawyers Association," the National Council of Juvenile and Family Court Judges, and the Texas Council on Family Violence. The Rules do not say how the Education Committee approves a program or whether it reviews content.

The Rules require advance review of course materials in exactly two places. A provider of the prosecutor disclosure training must "provide to the Court, prior to the training, course materials so the Court may approve the content" (Rule 12(g)(5)(i)). A request to approve a guardianship program not sponsored by a listed organization must be "accompanied by an outline of the materials that describe the course content, identify the presenters, indicate the time allotted to each segment, and provide the date and location of the program" (Rule 12(h)(4)(iii)). No comparable requirement applies to instruction on custody, conservatorship, possession, child protection, or family violence. The State already knows how to require materials and presenters

to be filed in advance. It requires them for prosecutors' disclosure duties and for guardianship. It does not require them for the subjects that decide where children live.

The Legislature has also set the subjects of family-court training by statute. Government Code § 22.110 requires each district judge, statutory county judge, chapter 201 associate judge, master, referee, and magistrate to complete twelve hours in the first term or first four years of service, including four hours on trafficking, child abuse and neglect, and elder abuse, six hours on community resources, "gender bias in the judicial process," and the dynamics of victimization, and one hour on the dynamics of family violence; five more hours in each later term; and, for "each judge of a court with primary responsibility for family law or family violence matters," an additional hour on family violence every two years (§ 22.110(b)). The required content includes "issues of attachment and bonding between children and caregivers" (§ 22.110(d)(10)). In adopting its rules the Court "may consult with the supreme court and with professional groups and associations in the state that have expertise in the subject matter to obtain the recommendations of those groups or associations for instruction content" (§ 22.110(c)). A sponsor of training on child abuse and neglect must have three years' experience training professionals on those issues, or personnel with five years' experience in the field (§ 22.110(d-1)). And the training on the dynamics of family violence "must be developed in consultation with a statewide family violence advocacy organization" (§ 22.110(d-2)).

Read together, these provisions establish three things. First, the statute names attachment and bonding as a required subject of judicial training and sets no standard for what is taught under that heading. A seminar that teaches the validated measures and the meta-analytic findings and a seminar that teaches a presenter's untested theory of attachment satisfy the statute equally. The attachment researchers' own consensus statement puts assessment of caregiver behavior first and judges assessments of attachment quality ill-advised as a basis for allocating custody time (Forslund et al., 2022), but nothing in Texas law asks whether a judicial seminar reflects that statement. Second, the qualifications the statute does impose on sponsors are qualifications of experience, not of evidence: years in the field, not the grade of the sources taught. Third, the statute names one consulted organization for part of the mandated content. Section 22.110(d-2) requires that the family-violence hour be developed in consultation with a statewide family violence advocacy organization, and names no counterpart consultation for any other subject. This chapter makes no criticism of any organization that serves in that role; consultation with people who work with victims is valuable. The point is that consultation is already a statutory feature of what judges are taught, and the answer is not to remove it. It is to subject every consulted role, that one included, to the same evidentiary test.

The Code of Judicial Conduct permits a judge to "speak, write, lecture, teach and participate in extra-judicial activities concerning the law" (Canon 4B(1)), provided the activity does not "cast reasonable doubt on the judge's capacity to act impartially" (Canon 4A(1)). A judge may accept "an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law" (Canon 4D(4)(a)), and any other gift only if the donor is not a party or person whose interests have come or are likely to come before the judge (Canon 4D(4)(c)). A search of the stored Code for "seminar" returned nothing. The Code contains no rule addressed

to training sponsored by advocacy organizations, and no rule requiring a judge to disclose the training he or she has received on a subject before ruling on it.

The public materials of the principal provider of Texas judicial education could not be examined. The Texas Center for the Judiciary describes itself as a 501(c)(3) nonprofit that provides judicial education and lists conferences, a webinar library, and family violence training, but its course materials and presenter lists appear to be available only to members. The Children's Commission's Child Welfare Judges Conference, held with the Texas Center, posts no agenda or materials. The State Bar's Advanced Family Law Course, which draws attorneys, judges, and allied professionals and admits commercial exhibitors and sponsors, was found only through vendor pages; whether particular sessions carried judicial credit was not found. This study could not determine what Texas family judges are actually taught, and it draws no conclusion from that limit. It notes only that a citizen, a litigant, or a legislator who wishes to know whether a judge deciding custody has been trained from evidence or from advocacy cannot readily find out from public sources.

What follows is that the integrity question the Committee was asked to study is, at bottom, a disclosure question, and a standards question. The State already requires materials in advance for two narrow kinds of training. It already names the topics of family-court training by statute. It has never asked what evidence those topics are taught from.

9.9 The record the Senate made

The Senate Committee on State Affairs heard the family charge on September 14, 2026, from 9:07 a.m. until it recessed at 6:28 p.m., and the judicial-integrity charge the next day. The minutes of both days were signed by the Committee clerk, David Lee. They record that invited testimony was followed by public testimony, and refer to the attached witness lists; they summarize no testimony.

On the family charge, sixty-five witnesses testified and thirteen more registered without testifying. Every one of them is recorded ON the charge, the ordinary posture at an interim hearing. The organizations and public officials who testified were the Texas Family Law Foundation; the Texas Public Policy Foundation; the Texas Council on Family Violence, through two witnesses; the Texas Conservative Coalition Research Institute; the Texas Advocacy Project; CRAFT; Americans For Parental Equality; Fighting Homelessness; a former district judge, the Honorable Emily Miskel, testifying for herself; and a sitting associate district judge, testifying for himself. Among those testifying on their own behalf were two child custody evaluators, two psychologists, two licensed professional counselors, and a physician. Most of the remaining witnesses were parents and citizens speaking for themselves. Registered without testifying were a policy analyst for the Texas Conservative Coalition Research Institute and a representative of The SAFE Alliance.

On the judicial-integrity charge, sixteen witnesses testified and two registered. Among them were the Honorable Nathan Hecht, testifying for himself; the president of the Capital Research Center; Americans For Parental Equality; two witnesses identified with Stop Legal Bullying; and

a research director testifying for himself. The rest testified as individuals. No family-law organization, no judicial-education provider, neither the Texas Center for the Judiciary nor the State Bar Family Law Section, and no family-violence coalition is recorded as testifying on the judicial-integrity charge. Written testimony submitted outside the witness list is not shown.

Two findings follow, and each is limited to what the lists show. The first is that the Committee now holds testimony from every side of the custody debate: the trade association of the family bar, two family-violence organizations, two public-policy institutes, a legal-aid organization for survivors, a parental-equality organization, judges, evaluators, clinicians, and a large number of parents. The Committee does not lack opinion. It lacks a common measure against which to weigh opinion. The second is that the institutions that actually design and deliver judicial education for family judges were not among the witnesses on the charge that asks about judicial education. The Committee therefore has testimony about training from people who have attended it, observed its effects, or objected to it, and none from the people who decide what it contains. The recommendation below would close that gap by putting the content itself on the public record.

9.10 One standard for every trainer

The judicial-integrity charge asks the Committee to "ensure Texas judges remain fair and impartial." A judge is not made impartial by hearing only one side's seminars, and is not made impartial by hearing none. A judge is made impartial, in a subject that depends on science, by being taught from evidence that has been graded by a standard everyone can see. The recommendation that follows is the author's, and it applies to him first.

The Legislature should amend Government Code § 22.110 and direct the Court of Criminal Appeals to amend the Rules of Judicial Education so that every program that counts for judicial education credit on a family-law subject meets one published evidence standard. The essential elements are these:

1. A published evidence standard. Every factual or scientific claim taught in a credit-bearing program on custody, conservatorship, possession, child protection, family violence, attachment and bonding, child development, or allegations of abuse is graded by an open, published scale of the kind this report uses: randomized and natural-experiment evidence and meta-analyses of them at the top, then prospective and quasi-experimental designs, then associational studies, then case reports and expert consensus. The grade travels with the claim.
2. Advance filing. The sponsor files the agenda, the presenters, the written materials, and the sources relied on with the Court before the program, as Rule 12(g)(5)(i) already requires for the prosecutor disclosure training.
3. Disclosure of ties. Each presenter discloses financial and organizational ties to any party, advocacy organization, or commercial product related to the subject taught, including fees earned from court appointments or from the training itself.
4. Publication. The filings are public, posted by the Court, and kept for the life of the credit.

5. Equal application. The standard applies without exception to every sponsor on the Rule 2(c) list, to every consultation under § 22.110(c) and (d-2), and to every presenter, whatever the presenter's position.

Each element is drawn from something Texas already does. Advance filing exists in Rule 12. Disclosure of ties exists in the Code of Judicial Conduct's gift rules and in the conflict-disclosure duties of Family Code § 107.107 for evaluators. Publication is the ordinary condition of any rule that is meant to be trusted. The grading scale is the one this report has applied to its own evidence in every chapter, including the evidence that favors the author's positions, and it can be applied by anyone.

The rule reaches the author's field exactly as it reaches every other. A program on attachment that teaches the validated instruments would have to cite the meta-analyses and state their effect sizes and limits, including the consensus statement's judgment that assessments of attachment quality are most suitable for guiding supportive interventions and ill-advised as a basis for allocating custody time (Forslund et al., 2022). A training in any therapeutic or relational intervention would have to state when its outcome data are uncontrolled before-and-after comparisons, and could not teach biological or nutritional claims that have no Grade A or B support. A shared-parenting presentation would have to state Bauserman's effect of d = .23 as correlational and the Swedish estimate as a working paper limited to marginal cases. A presentation on the dynamics of family violence would have to state its sources at the same level of precision, and so would a presentation on parental alienation, which this report frames as a set of behaviors rather than a diagnosis. None of these presenters would be excluded. All of them would be visible, and all of their claims would be graded.

The symmetry is not a concession made for appearance. It is the only version of the recommendation that answers the charge. A rule that measured only the seminars of one's opponents would be the "training based on skewed information" the charge describes, enacted by statute. A rule that measures everyone's evidence by one scale, publicly, is the remedy.

9.11 Objections

Three objections deserve an answer.

The first is that the rule would intrude on judicial independence, because the content of judicial education belongs to the judiciary. The answer is that the Legislature already sets the subjects of family-court training by statute, already requires a particular consultation in developing one of them, and already directs that noncompliant judges be reported to the State Commission on Judicial Conduct (§ 22.110(b), (d-2), (e)). A requirement that the content taught under those statutory headings be graded and published is of the same kind as the requirements already in force, and it leaves the Court of Criminal Appeals in charge of the rules that carry it out.

The second is that grading evidence is itself contestable, and that whoever writes the scale controls the outcome. The answer is that the scale proposed here is the ordinary hierarchy of research design taught in every graduate methods course, and that it is published in advance and applied to every side. A presenter who disputes a grade can say so in the filed materials,

where the dispute is also public. Contestable judgments made in the open are an improvement on uncontested judgments made where no one can see them.

The third is that the rule would burden small sponsors and discourage practitioners from teaching. The answer is that the filing required is the same outline the Rules already demand of guardianship programs, and that a presenter who cannot state the sources of what he teaches to judges should not be teaching it to judges. The burden falls on the evidence, which is where it belongs.

9.12 What follows

The public record shows organized, lawful, and continuous participation in writing and teaching Texas family law by those who practice within it, a fee statute enacted without any measure of its effect on children, judicial training that is prescribed by topic and hour and never by evidence, and a statute that already names one consulted organization for part of that training. None of it requires a motive to explain it; all of it is consistent with a system that never asks what its rules do to the child. Chapter 10 turns from how the rules are made to what happens when the people who apply them knowingly break the relationships those rules exist to protect, and asks what consequences Texas law now attaches to that conduct and what consequences it could attach. # Chapter 10. Accountability

Chapter 9 showed how the rules of Texas family law are written and taught, in which the people who work within them participate, lawfully and openly, without any requirement that the rules be measured against what they do to children. This chapter asks the question that follows. When an official, an appointee, or a party knowingly or intentionally uses the machinery of the family courts to sever a child's relationship with a fit parent, what consequence does Texas law attach? The approved thesis of this report ends with the proposition that the State "should attach real consequences to knowing or intentional conduct that destroys that relationship." This chapter tests that proposition against the law as it stands, federal and state, civil and criminal, and then sets out what Texas can change, what it cannot, and how.

The chapter discusses no individual case. Its subject is the structure of consequence, read from the text of the law.

10.1 The oath and the open courts

Every Texas judge, prosecutor, and appointed officer begins with the same words. Article XVI, § 1(a) of the Texas Constitution requires every elected and appointed officer, before entering on the duties of office, to swear or affirm: "I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

Since November 4, 2025, the Constitution those officers swear to defend has said, in art. I, § 37, that "the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody,

and control of the parent's child, including the right to make decisions concerning the child's upbringing." And since 1876 it has said, in art. I, § 13, that "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

The oath binds officers to defend a fundamental right that the Constitution now names; the open-courts clause promises a remedy for injury. Whether an officer who knowingly violates the first can be made to answer under the second is the question of this chapter. The answer is that in most cases the officer cannot, that the reasons are partly federal and fixed and partly Texan and changeable, and that the Texan part is larger than the federal cases alone would suggest. The Constitution promises a remedy by due course of law for an injury done to a person. It does not say that the remedy fails when the person doing the injury holds an appointment from the court.

10.2 The federal floor Texas cannot move

The federal civil-rights statute, 42 U.S.C. § 1983, makes liable every person who, under color of state law, deprives another of rights secured by federal law. Read alone, it would reach a judge, an evaluator, or a caseworker who knowingly violated a parent's federal rights. It has not been read alone.

The Supreme Court held in Pierson v. Ray, 386 U.S. 547, 553 to 555 (1967), that the common-law immunity of judges "was not abolished by § 1983." Stump v. Sparkman, 435 U.S. 349, 356 to 357 (1978), decided five to four, held that a judge is not deprived of immunity "because the action he took was in error, was done maliciously, or was in excess of his authority," and is liable only for acts taken in the "clear absence of all jurisdiction"; an act is judicial if it is a function normally performed by a judge and the parties dealt with the judge in that capacity (at 362). Mireles v. Waco, 502 U.S. 9 (1991) (per curiam), added that judicial immunity "is an immunity from suit, not just from ultimate assessment of damages," that it "is not overcome by allegations of bad faith or malice," and that it yields only for nonjudicial acts and for judicial acts "taken in the complete absence of all jurisdiction." In 1996, after Pulliam v. Allen, 466 U.S. 522 (1984), had held that judicial immunity did not bar prospective injunctive relief or a fee award against a judge, Congress amended § 1983 to bar injunctive relief against a judicial officer for an act or omission in the judicial capacity "unless a declaratory decree was violated or declaratory relief was unavailable," and amended 42 U.S.C. § 1988(b) so that a judicial officer "shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction." That the amendments answered Pulliam is an inference from their timing and subject; no legislative history was read.

The federal law of immunity is otherwise functional. Forrester v. White, 484 U.S. 219, 227 (1988), held that immunity "is justified and defined by the functions it protects and serves, not by the person to whom it attaches," and denied absolute immunity to a judge for demoting and dismissing a court employee, an administrative act. Witnesses, including officers testifying at trial, are absolutely immune from § 1983 damages for their testimony (Briscoe v. LaHue, 460

U.S. 325 (1983)). Officials performing discretionary functions have qualified immunity: they are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known" (Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).

None of this can be changed by Texas. In Howlett v. Rose, 496 U.S. 356 (1990), a unanimous Court held that "The elements of, and the defenses to, a federal cause of action are defined by federal law," and repeated its earlier statement that conduct wrongful under § 1983 "cannot be immunized by state law." The rule cuts both ways. A Texas statute cannot strip a Texas judge of federal judicial immunity in a § 1983 suit, and it cannot give a court appointee more immunity against a § 1983 claim than federal law gives. That consequence is drawn directly from Howlett; no case was found applying it to a state statute that tried to remove judicial immunity, and no State was found to have tried.

What follows is the first boundary of every proposal in this chapter. Proposals that promise to "strip immunity" from judges in federal civil-rights suits promise something the Texas Legislature has no power to deliver, and the Legislature should be told so plainly. The same Court, however, has said what a State can do. "When state law creates a cause of action, the State is free to define the defenses to that claim, including the defense of immunity, unless, of course, the state rule is in conflict with federal law" (Ferri v. Ackerman, 444 U.S. 193 (1979)). Every route to accountability that is open to Texas runs through its own causes of action, its own immunities, its own criminal law, and its own discipline. The remainder of this chapter follows those routes.

10.3 Texas immunities, and who made them

Texas immunity for court actors comes from three sources: the common law as the courts have declared it, statutes the Legislature has enacted, and the narrow waivers the Legislature has allowed. The striking fact, once they are laid side by side, is how much of the shield is the Legislature's own work, and therefore how much of it the Legislature can reshape.

10.3.1 Judges and those who work beside them

Texas follows the federal rule for judges. Judges are immune from liability and suit for judicial acts within their jurisdiction, even erroneous or malicious acts, and the immunity is overcome only for nonjudicial acts or acts in the complete absence of all jurisdiction (Twilligear v. Carrell, 148 S.W.3d 502, 504 (Tex. App. Houston 14th Dist. 2004)).

For those who work beside judges, the Supreme Court of Texas applies a functional test of derived judicial immunity. In Dallas County v. Halsey, 87 S.W.3d 552 (Tex. 2002), the Court held that a person is absolutely immune when acting as "an integral part of the judicial system or an 'arm of the court,'" and that the test is whether the person is "intimately associated with the judicial process" and "exercises discretionary judgment comparable to that of the judge" (at 554). It refused that immunity to a court reporter preparing the record, whose task is ministerial (at 557), and described, without itself deciding the question, court of appeals decisions holding

that court-appointed mental health professionals in custody cases act "as a factfinder for the court" and that a guardian ad litem appointed to "function on behalf of the court" is absolutely immune (at 555).

The courts of appeals have applied that immunity to the actors who most shape custody outcomes. In Delcourt v. Silverman, 919 S.W.2d 777, 785 (Tex. App. Houston 14th Dist. 1996), cert. denied, 520 U.S. 1213 (1997), the court held a court-appointed psychologist and a guardian ad litem in a custody case absolutely immune, reasoning that a guardian ad litem appointed under the former Family Code "is absolutely immune from liability for his or her actions taken pursuant to and within the scope of their appointment, provided that the appointment contemplates the ad litem acting as an extension of the court," and that "Fear of liability to one of the parents can warp judgment that is crucial to vigilant loyalty for what is best for the child." In Jones v. Sherry, No. 03-18-00279-CV (Tex. App. Austin June 28, 2019, mem. op.), the Austin court applied derived judicial immunity to a court-appointed custody evaluator.

10.3.2 The statutory immunity of family-court appointees

The Legislature has spoken to the same actors by statute, and it has said something different. Family Code § 107.009, read in the stored Family Code text rendered December 13, 2025, provides:

"(a) A guardian ad litem, a child custody evaluator, or an adoption evaluator appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, child custody evaluator, or adoption evaluator. (a-1) An attorney ad litem or amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken in the capacity of attorney ad litem or amicus attorney. (b) Subsections (a) and (a-1) do not apply to an action taken, a recommendation made, or an opinion given: (1) with conscious indifference or reckless disregard to the safety of another; (2) in bad faith or with malice; or (3) that is grossly negligent or wilfully wrongful."

The section was added in 2003 and amended in 2005, in 2017 by H.B. 1501, and in 2025 by H.B. 2530, effective September 1, 2025. The Jones court noted the 2017 limits in a footnote while resting its holding on derived judicial immunity.

The two rules do not agree. Delcourt's common-law immunity is absolute and "is not overcome by allegations of bad faith or malice," to borrow the federal formulation. Section 107.009 withdraws immunity precisely for bad faith, malice, gross negligence, wilful wrongdoing, and conscious indifference to safety. The statute does not say whether it displaces the common-law immunity or sits beside it. No source read for this report reconciles them. A parent injured by an evaluator's bad-faith report therefore cannot know, before suing, whether the Legislature's exception or the courts' absolute rule will govern. A statute that names its exceptions and a common-law rule that recognizes none are not two layers of protection. They are an unanswered question, and the cost of the uncertainty falls on the parent.

The Legislature already knows how to legislate judicial immunity directly. An associate judge

appointed under Family Code chapter 201 “has the judicial immunity of a district judge” (§ 201.017), and parallel provisions in chapter 54 of the Government Code confer the same immunity on masters and magistrates. Immunity for the officers the Legislature creates is, in large part, a legislative choice. The Supreme Court of Texas has said how the Legislature must write if it wishes to change a common-law immunity: “Common-law defenses may be abrogated by statute, but under Texas law, statutes purporting to abrogate common-law principles must do so either expressly or by necessary implication” (Taylor v. Tolbert, No. 20-0727 (Tex. May 6, 2022)). In the author’s view, a single sentence declaring that § 107.009 states the exclusive immunity of a chapter 107 appointee would end the conflict.

10.3.3 Attorneys

Lawyers in a custody case hold a separate immunity against claims by the opposing parent. Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477 (Tex. 2015), decided five to four, held that attorneys are immune from liability to nonclients for conduct in representing a client in litigation, that the inquiry looks to the kind of conduct rather than its alleged wrongfulness, and that conduct “foreign to the duties of an attorney” is not protected; sanctions, contempt, and discipline remain. Youngkin v. Hines, 546 S.W.3d 675 (Tex. 2018), held that “a lawyer is no more susceptible to liability for a given action merely because it is alleged to be fraudulent or otherwise wrongful.” Taylor v. Tolbert, which arose from a child custody modification, held that the immunity “focuses on the function and role the lawyer was performing, not the alleged wrongfulness, or even asserted criminality,” applied it against a claim under the Texas wiretap statute, and held that it does not bar a claim under the federal wiretap statute. What follows for policy is exact. If the Legislature decides that particular conduct in family litigation should carry civil liability to the other parent, the statute must say expressly that attorney immunity does not apply to that claim, or Taylor will supply the defense.

10.3.4 Officials, the Bill of Rights, and the Tort Claims Act

Government employees performing discretionary duties within their authority in good faith hold official immunity, judged by whether a reasonably prudent officer in the same circumstances could have believed the conduct justified (City of Lancaster v. Chambers, 883 S.W.2d 650, 653, 656 (Tex. 1994)). Because the Tort Claims Act makes the employer liable only where the employee would be personally liable, the employee’s official immunity defeats the employer’s liability as well (at 658).

Texas law gives no damages remedy for a violation of the Texas Bill of Rights unless a statute creates one. City of Beaumont v. Bouillion, 896 S.W.2d 143, 149 (Tex. 1995), held: “We hold there is no implied private right of action for damages arising under the free speech and free assembly sections of the Texas Constitution,” while adding that “suits for equitable remedies for violation of constitutional rights are not prohibited.” Bouillion did not decide whether the Legislature may create a damages remedy, and this report does not read it as having done so. By the same reasoning, though no court has yet said so, the new parental-rights guarantee of art. I, § 37 is unlikely to carry, by itself, any damages action for its violation.

The Tort Claims Act does not fill the gap. It waives immunity only for injuries arising from motor vehicles and motor-driven equipment and from a condition or use of tangible personal or real property (Civ. Prac. & Rem. Code §§ 101.021, 101.025); it excludes intentional torts (§ 101.057); it excludes independent contractors from its definition of employee (§ 101.001(2)); and it says, in § 101.053(a), read in the stored text rendered May 14, 2026: “This chapter does not apply to a claim based on an act or omission of a court of this state or any member of a court of this state acting in his official capacity or to a judicial function of a governmental unit. ‘Official capacity’ means all duties of office and includes administrative decisions or actions.” That last clause is narrower for the injured person than the federal rule. Forrester denies a judge absolute federal immunity for administrative acts; the Texas Act withdraws its waiver from them by statute.

The sum is this. A parent who has been injured by the knowing misconduct of a court actor in a Texas custody case has, under Texas law today, no constitutional damages action, no Tort Claims Act route, an attorney immunity that does not yield to allegations of fraud, a common-law immunity for appointees that does not yield to malice, and a statutory exception for appointees whose relation to that common-law immunity no court has settled. The open-courts clause promises a remedy for injury to person or reputation. For this class of injury, the statute books supply none that can be counted on.

10.4 What a Texas cause of action could look like

Ferri establishes that Texas may create its own cause of action and define its defenses. Taylor establishes how it must write to displace a common-law immunity. What remains is design.

Texas already calibrates enhanced civil remedies to culpability, and its models are tested. The Deceptive Trade Practices Act allows economic damages; for conduct committed knowingly, mental anguish damages and up to three times economic damages; for conduct committed intentionally, up to three times mental anguish and economic damages; mandatory costs and fees to each prevailing consumer; and fees to the defendant for a groundless, bad-faith, or harassing suit (Bus. & Com. Code § 17.50(b)(1), (c), (d)). The exemplary damages statute requires clear and convincing proof of fraud, malice, or gross negligence and a unanimous jury (§ 41.003), caps the award (§ 41.008(b)), and lifts the cap where the claim rests on knowing or intentional conduct described as a felony in listed Penal Code sections, among them injury to a child (§ 22.04), continuous sexual abuse of a young child (§ 21.02), misapplication of fiduciary property (§ 32.45), and fraudulent destruction, removal, or concealment of a writing (§ 32.47) (§ 41.008(c)).

A cause of action against court appointees built from these parts would follow the way Texas already prices culpable conduct. It would reach only the states of mind § 107.009(b) already names; it would carry enhanced damages for knowing and intentional conduct on the DTPA model; it would require clear and convincing proof; it would shift fees against a groundless or harassing suit on the § 17.50(c) model; and it would state expressly that derived judicial immunity and attorney immunity do not apply to the claim it creates.

No State was found to have done this. The only comparable proposal found is California A.B. 2475 of the 2009 to 2010 session, which, as amended May 11, 2010, would have provided that "the doctrine of judicial immunity or quasi-judicial immunity shall not apply to exonerate any private 3rd party appointed by the court in an advisory capacity" who violates law or professional standards. The Assembly Appropriations Committee's analysis of May 18, 2010 describes the bill as establishing a complaint process and says the immunity provisions were deleted out of concern that removing them would "dissuade some court-appointed experts from participating." The two documents disagree on whether the immunity provision survived, and the bill's final disposition was not found. No enacted statute in any State creating a damages action against court-appointed custody evaluators or guardians ad litem was found.

That concern is the strongest counterargument, and it is the same one Delcourt states: fear of suit by a disappointed parent "can warp judgment." It deserves an answer, not a denial. The answer is the culpability threshold. An evaluator who forms a professional judgment in good faith, even a mistaken one, would face no liability under the design proposed here, because negligence alone would not suffice. The exposure would begin only where the Legislature has already said, in § 107.009(b), that immunity should end: bad faith, malice, gross negligence, wilful wrongdoing, and conscious indifference to safety. Fee shifting against harassing suits answers the worry that disappointed parents would sue as a matter of course. And no source read for this report tests the immunity said to protect children's welfare against any measure of children's welfare. The claim that liability would drive good evaluators away is a prediction, and the Legislature can watch whether it comes true, because the appointment and outcome data recommended in Chapter 11 would show it.

One boundary remains. Whether a statutory damages action against a judge for a judicial act would offend the separation of powers (Tex. Const. art. II, § 1) is a question no source read for this report resolves, and no Texas case read holds that judicial immunity is constitutionally required. The prudent design, therefore, confines the new cause of action to court appointees and to administrative acts, under the culpable states of § 107.009(b), where the functional rule of Forrester and Halsey already denies absolute immunity. The report proposes no liability for judicial rulings, and the separation-of-powers question for judges is flagged as unresolved. Conduct by a judge that is not a ruling is left to the criminal law, as defined by conduct in Section 10.11, and to the State Commission on Judicial Conduct.

10.5 The criminal law as written

If the civil law offers a parent little, the criminal law might be expected to offer more. It reaches deliberate abuse of office. It reaches it, however, only at the most demanding level of intent, and punishes it less severely than it punishes a parent who keeps a child past the hour an order allows. The Penal Code text below is read from the stored text rendered April 10, 2026.

10.5.1 Official oppression and abuse of official capacity

Section 39.03 defines official oppression: "(a) A public servant acting under color of his office or

employment commits an offense if he: (1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful; (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or (3) intentionally subjects another to sexual harassment." A public servant acts under color of office if he "acts or purports to act in an official capacity or takes advantage of such actual or purported capacity" (§ 39.03(b)). The offense is a Class A misdemeanor, except that it is a third-degree felony if the public servant intended to impair the accuracy of data reported to the Texas Education Agency (§ 39.03(d)).

Two features of the text decide its reach. The first is the double mental state. Subdivision (a)(2), the provision that would govern the denial of a parent's right, requires that the conduct be intentional and that the public servant know it is unlawful. A public servant who intentionally denies a parent a right while believing, or claiming to believe, that the law permits it has not committed the offense. The second is the grade. The deliberate and knowing denial of a constitutional right by a public servant is punished at the misdemeanor level. The Legislature has made official oppression a felony when it is committed to impair the accuracy of school data, and has left it a misdemeanor when it knowingly denies a parent the care of a child.

Bills to broaden § 39.03 have been filed and have failed. As recorded in this study's authorities file, H.B. 1640 (82nd Leg.), H.B. 183 (83rd Leg.), H.B. 563 (84th Leg.), and H.B. 1642 (87th Leg.) would have added a knowing or reckless tier, or an excessive-force ground, to the offense. None passed. No reason for their failure is stated here.

Section 39.02, abuse of official capacity, requires that a public servant, "with intent to obtain a benefit or with intent to harm or defraud another," intentionally or knowingly violate "a law relating to the public servant's office or employment" or misuse government property, services, or personnel (§ 39.02(a)). Violating a law relating to the office is a Class A misdemeanor (§ 39.02(b)); the misuse of government things is graded by value, from a Class C misdemeanor to a first-degree felony (§ 39.02(c)). The statute thus grades the misuse of government property by its dollar value up to a first-degree felony, and grades the misuse of an office's legal powers against a person at a misdemeanor however great the harm. A public servant whose misuse of government property, with the required intent, is valued at $300,000 or more commits a first-degree felony. A public servant who, with intent to harm, knowingly violates the law of his office to separate a parent and child commits a Class A misdemeanor.

10.5.2 Interference with child custody

The Penal Code does recognize the wrong of severing a child from a parent. It recognizes it, however, chiefly when a parent commits it. Section 25.03(a) makes it an offense for a person to take or retain a child younger than eighteen "(1) when the person knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody," or to remove the child from the court's district with intent to deprive the court of authority, or to take the child outside the United States with intent to deprive a person entitled to possession or access. Section 25.03(b) makes it an offense for a noncustodial parent, "with the intent to interfere with the lawful custody of a child,"

knowingly to entice or persuade the child to leave the custodial parent. The offense is a state jail felony (§ 25.03(d)). Subsection (c-2) excludes the international-removal offense for a person fleeing family violence.

Place § 25.03 beside § 39.03 and the asymmetry is plain. A parent who knowingly keeps a child in violation of a temporary order, which the parent could not appeal, commits a state jail felony. A public servant who intentionally denies that parent the exercise of a constitutional right, knowing the denial to be unlawful, commits a Class A misdemeanor. The Penal Code protects the court's order with a felony and the parent's right with a misdemeanor. Its protection of the relationship between parent and child is real, but it runs in one direction: it punishes the parent who takes the child from the order as a felony, and the official who knowingly and unlawfully takes the child from the parent only as a misdemeanor.

10.5.3 Perjury, aggravated perjury, and retaliation

A person commits perjury if, "with intent to deceive and with knowledge of the statement's meaning," the person makes a false statement under oath where the statement is required or authorized by law to be made under oath, or makes a false unsworn declaration under chapter 132 of the Civil Practice and Remedies Code (§ 37.02(a)). Perjury is a Class A misdemeanor (§ 37.02(b)). It becomes aggravated perjury, a third-degree felony, if the false statement is made "during or in connection with an official proceeding" and "is material" (§ 37.03). A knowingly false, material statement under oath in a custody case is therefore already a felony. The law exists. Section 10.9 asks why it is so seldom brought to bear, and what can be done about it.

Section 36.06 makes it a third-degree felony to intentionally or knowingly harm or threaten to harm another by an unlawful act in retaliation for, or to prevent, the other's service or status as a public servant, witness, prospective witness, or informant, or as a person who has reported or intends to report a crime (§ 36.06(a), (c)). The protection extends to a parent who reports a crime to the authorities. It does not, by its terms, reach the use of lawful process in a family court in retaliation for such a report, because it requires an unlawful act.

10.5.4 What the criminal law leaves out

The criminal law thus punishes the parent who defies a custody order and the witness who lies under oath with felonies, and punishes the public servant who knowingly turns the power of office against a parent's rights with a misdemeanor, and only if intent and knowledge of unlawfulness are both proved. The gap is not that the conduct is lawful. It is that the law grades it as minor, requires a double mental state that is hard to prove, and the bills filed to change it have not passed.

10.6 False reports

The false accusation is the other side of the accountability ledger, and it matters equally to the argument, because a system that punishes official misconduct but ignores the knowing misuse of the reporting system by private parties would protect one relationship by exposing another.

Texas law already treats the knowing false report as a crime. The question is whether the punishment fits the harm.

Family Code § 261.107 provides that "A person commits an offense if, with the intent to deceive, the person knowingly makes a report as provided in this chapter that is false," a state jail felony, or a third-degree felony on a prior conviction under the section (§ 261.107(a)). A court in a suit affecting the parent-child relationship may restrict the reporter's access to the child on a finding that a report was false or lacked factual foundation (§ 261.107(b)). The appropriate county prosecuting attorney is responsible for prosecution (§ 261.107(c)). A convicted person must pay the falsely accused person's reasonable attorney's fees, court costs, and expenses in any proceeding relating to the false report (§ 261.107(d)), and is liable to the State for a civil penalty of $1,000 recoverable by the Attorney General (§ 261.107(e)). The section was most recently amended by H.B. 2524 (89th Leg.), effective September 1, 2025. Family Code § 153.013 adds that when a party to a pending suit "makes a report alleging child abuse by another party to the suit that the reporting party knows lacks a factual foundation, the court shall deem the report to be a knowingly false report," that evidence of it is admissible on conservatorship, and that the court "shall impose a civil penalty not to exceed $500."

The good-faith reporter is protected. Section 261.106(a) grants immunity from civil and criminal liability to "A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report," and § 261.106(c) withholds that immunity from a person "who acts in bad faith or with malicious purpose in reporting." Federal law requires the same line. A State that accepts the basic grant under the Child Abuse Prevention and Treatment Act must provide immunity for individuals making good-faith reports (42 U.S.C. § 5106a(b)(2)(B)(vii)), and may withhold a reporter's identity except where a court, after review in camera, finds "reason to believe that the reporter knowingly made a false report" (§ 5106a(b)(3)). The federal floor protects good faith only. It does not protect knowing falsehood, and it contemplates a court finding that a report was knowingly false.

The structure is sound in its elements and weak in its grade. A knowingly false report can cost a child daily contact with a parent for months or years. Under § 261.107 the false reporter faces a state jail felony regardless of what was alleged. Under § 153.013 the party who makes such a report in a pending custody case faces a civil penalty of no more than $500. The penalty for a knowingly false accusation does not vary with the gravity of what was falsely alleged, and the penalty within a custody suit is capped at $500.

No data on prosecutions under § 261.107 or findings under § 153.013 were obtained for this report. Chapter 6 showed that the research on false allegations in custody disputes rests on caseworker judgments rather than court findings, and that the best-studied sample found intentionally false reports to be a minority of all reports and a larger share in disputed custody cases (Trocmé & Bala, 2005). The case for a stronger penalty does not depend on any claimed rate. It depends on the principle that the punishment for knowingly invoking the State's power against a parent should be measured by the power invoked.

The author's recommendation is a mirror penalty. A person who knowingly makes a false report of abuse or neglect with intent to deceive would face the punishment range of the offense falsely alleged, capped at the first-degree range for a capital allegation, without sex-offender registration. Three safeguards are essential and are part of the recommendation, not afterthoughts. First, the offense requires knowing falsehood and intent to deceive, as § 261.107(a) already does; a mistaken report, an unproven report, and an unsubstantiated report are not false reports. Second, the good-faith immunity of § 261.106 is restated in the new section and applies in full. Third, charging is reserved to the prosecutor; no private party may initiate the charge, and a finding in the custody case is not itself a conviction. Those safeguards answer the strongest objection, that a heavier penalty would deter real victims from reporting. A person who reports in good faith is protected by the same good-faith immunity that exists now.

10.7 The State Commission on Judicial Conduct after the 2025 amendment

The constitutional instrument for judicial discipline is the State Commission on Judicial Conduct, which the voters restructured on November 4, 2025, when they approved the amendment of Tex. Const. art. V, § 1-a (as amended Nov. 4, 2025). The text below is read from the stored Constitution rendered July 31, 2026, which reflects the 2025 amendments to subsections (2), (3), (6), (8), and (9) and the addition of (2-a), (2-b), and (8-a).

The Commission now "consists of the following 13 members: (i) six judges or justices of courts in this state appointed by the Supreme Court with the advice and consent of the Senate, two of whom must be trial court judges; and (ii) seven citizens appointed by the Governor with the advice and consent of the Senate, who are at least 35 years of age" (art. V, § 1-a(2)). Citizens are now a majority. A quorum is seven, and recommendations for retirement, censure, suspension, or removal require the affirmative vote of at least seven members (§ 1-a(5)).

The grounds of discipline are stated in § 1-a(6)(A): a judge may be removed "for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of the person's duties or casts public discredit upon the judiciary or administration of justice," and may be disciplined or censured in lieu of removal. The same subsection permits the Commission to suspend a judge "immediately on being indicted by a State or Federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct."

The most consequential change concerns private discipline. The Commission may issue a private admonition, warning, reprimand, censure, or order of additional training only "for a person holding an office or position specified in Subsection (6) of this Section who has never been issued an order under this subparagraph and in response to a complaint or report other than a complaint or report alleging the person engaged in conduct constituting a criminal offense" (§ 1-a(8)(i)). Two limits follow from the text. A private order is available once in a judge's career. And when a complaint alleges conduct constituting a criminal offense, private discipline is not

available at all; the Commission must act publicly, institute formal proceedings, or decline. After a formal hearing, if the Commission finds wilful or persistent misconduct, it “shall issue” a public order or may recommend removal or retirement to a review tribunal (§ 1-a(8-a)). A review tribunal that orders removal “shall prohibit such person from holding judicial office in the future” (§ 1-a(9)).

The Legislature has defined misconduct by statute under § 1-a(14). Government Code § 33.001(b), read in the stored text rendered October 1, 2026, provides that “wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” includes “(2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct,” along with wilful, persistent, and unjustifiable failure to execute the court’s business on time, including failure to meet deadlines set by statute, rule, or order (§ 33.001(b)(1)), and incompetence (§ 33.001(b)(4)). The section is quoted as amended in 2025 (Gov’t Code § 33.001, as amended 2025). The definitions are expressly not exclusive (§ 33.001(c)).

Read together, these provisions tie judicial discipline to the Penal Code. A judge’s wilful violation of a penal statute is misconduct by definition; a complaint alleging criminal conduct cannot be resolved privately; indictment permits immediate suspension. If knowing interference with the parent-child relationship by a judge acting under color of law were a defined offense, a complaint alleging it would be, by the Constitution’s own terms, a complaint that cannot be disposed of privately.

Two features of the scheme limit it. The first is confidentiality. “All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by law,” and filing papers with or testifying before the Commission is privileged unless otherwise provided by law (§ 1-a(10)). The second is the scope of the Commission’s immunity. Government Code § 33.006 makes the Commission, its members, staff, special masters, special counsel, and persons appointed to assist it absolutely immune “for an act or omission committed by the person within the scope of the person’s official duties,” an immunity that “is absolute and unqualified and extends to any action at law or in equity.” The section names the Commission and those who work for it. It does not name complainants. A complainant’s protection rests on the privilege in § 1-a(10), and, according to the Legislative Budget Board’s fiscal note on the 2025 judicial-conduct legislation, that legislation also added an administrative penalty for knowingly filing a false complaint. The pairing is fitting: the false complaint against a judge and the false report against a parent are the same wrong, and both should be answered by the same principle of knowing falsehood.

The Commission’s caseload shows the scale. As recorded in this study’s authorities file from the Commission’s fiscal year 2024 annual report, the Commission received 1,135 complaints that year and 49 resulted in discipline. The reasons for dismissal were not analyzed and the page of the report was not pinned, so no conclusion about the merit of the dismissed complaints is drawn. The Legislative Budget Board’s final fiscal note on the 2025 joint resolution amending art. V, § 1-a found no significant fiscal implication beyond the $191,689 cost of publishing the amendment, and its fiscal note on the 2025 judicial-conduct legislation put the Commission’s added cost at $3,204,773 in fiscal 2026, most of it for office space, and $656,488 in fiscal 2027.

On the State's own budget office's estimates, the oversight reforms were inexpensive.

What follows is that Texas has, since January 1, 2026, a disciplinary body with a citizen majority, no private escape for criminal allegations, and a statutory definition that makes wilful violation of the penal statutes misconduct. It lacks a penal statute that names the conduct this report is concerned with. The Commission can enforce only the law it is given.

10.8 The separation of powers and the prosecutor

The most direct proposal for accountability, a statute requiring prosecutors to prosecute officials who violate parents' rights, meets a constitutional wall, and the Legislature should know where it stands before drafting.

Article II, § 1 divides the powers of Texas government among three departments and provides that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." Article V, § 21 provides that county attorneys "shall represent the State in all cases in the District and inferior courts in their respective counties," and that where a district attorney serves, "the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature."

In Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987), the Court of Criminal Appeals struck down the Texas Speedy Trial Act, which set deadlines on the prosecutor's readiness and required dismissal with prejudice, holding that the Legislature may not remove or abridge the prosecutor's exclusive prosecutorial function without an express constitutional provision. In State v. Stephens (Tex. Crim. App. Dec. 15, 2021), the court held Election Code § 273.021 unconstitutional by a vote of eight to one, holding that exceptions to the separation of powers must be expressly permitted by the Constitution, and observing that "may" is permissive and "shall" mandatory. In Webster v. Commission for Lawyer Discipline, No. 23-0694 (Tex. Dec. 31, 2024), decided seven to two, the Supreme Court of Texas held that the practice of law is regulated under the judiciary's inherent power and that the State Bar Act is not its source.

Three consequences follow. A statute commanding a district attorney to prosecute every complaint against an official, or setting a deadline for prosecution enforced by dismissal or penalty, is exposed to Meshell. A statute giving the Attorney General or another officer independent power to prosecute in place of the local prosecutor is exposed to Stephens. And a statute regulating lawyers' professional duties operates in a field the Supreme Court of Texas now describes as the judiciary's own, which counsels that duties of lawyers be pursued through the Court's rules as well as by statute. One route is open by statute, and the report adopts it as its position. The statute places a duty on the prosecuting attorney: on a magistrate's finding of probable cause that a specified offense against a child occurred, the prosecuting attorney shall present the matter to a grand jury within sixty days or file written reasons with the district judge. The statute commands no prosecution and sets no dismissal penalty. The decision to indict stays with the grand jury and the decision to try stays with the prosecutor, so the exclusive function that Meshell protects is left intact. Whether this duty survives Meshell has

not been decided, and the bill should be drafted to keep the prosecutor's discretion intact at every stage after presentation. A joint resolution, adopted by two-thirds of each house and approved by the voters, expressly authorizing presentation by a prosecutor other than the local one, is insurance against an adverse reading and not a requirement of the statute.

10.9 Perjury and the duty to report it

Aggravated perjury in a custody case is a third-degree felony (§ 37.03). Yet the routes by which a knowingly false sworn statement in a family court reaches a prosecutor are indirect, and the professional rules that require lawyers and judges to report misconduct send their reports to disciplinary bodies, not to prosecutors.

The Texas Disciplinary Rules of Professional Conduct (effective March 7, 2025) forbid a lawyer knowingly to "make a false statement of material fact or law to a tribunal" or to "offer or use evidence that the lawyer knows to be false" (Rule 3.03(a)(1), (5)), and require a lawyer who has offered material evidence and learns of its falsity to try to persuade the client to correct it and, failing that, to "take reasonable remedial measures, including disclosure of the true facts" (Rule 3.03(b)). Rule 8.03(a) requires a lawyer "having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" to "inform the appropriate disciplinary authority," and Rule 8.03(b) imposes the same duty as to a judge's violation of the rules of judicial conduct that raises a substantial question as to the judge's fitness. The duty does not reach information protected as confidential under Rule 1.05 (Rule 8.03(d)). The Code of Judicial Conduct (as amended through June 12, 2026) requires a judge "having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" to "inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action" (Canon 3D(2)), and imposes a parallel duty to inform the State Commission on Judicial Conduct of another judge's violation raising a substantial question as to fitness (Canon 3D(1)).

Every one of these duties runs to a disciplinary authority. None runs to a prosecutor, and none applies to the most common source of false sworn statements in a custody case, which is a party rather than a lawyer. A judge who finds in a custody ruling that a party's sworn testimony was knowingly false has no duty under any rule read for this report to refer the matter to the district attorney. The comment to Rule 8.03 observes that "Reporting a violation is especially important where the victim is unlikely to discover the offense absent such a report." In a custody case the person most affected by perjury is a child, who will discover nothing.

The author's recommendation is a duty of referral. When a judge in a suit affecting the parent-child relationship finds on the record that a party or witness made a material statement under oath that the person knew to be false, the judge would be required to refer the finding and the record to the prosecuting attorney, and a lawyer who knows that a client or witness has given materially false testimony that the lawyer cannot remedy under Rule 3.03(b) would be required

to report the fact, consistent with Rule 1.05, to the court. The referral decides nothing; the prosecutor retains every discretion Meshell protects. Because the duties of lawyers and judges lie within the Supreme Court of Texas's rulemaking power as well as the Legislature's, the recommendation should be pursued by statute for judges' referral duty and by a request to the Supreme Court for the conforming amendments to Rule 8.03 and Canon 3D.

10.10 Nondisclosure agreements and child abuse

A particular form of concealment deserves its own treatment: the agreement, often part of a settlement, by which a person promises not to disclose abuse of a child. Texas has acted against it, but only for sexual abuse, and only by voiding the clause.

Civil Practice and Remedies Code § 129C.002, added by S.B. 835 of the 89th Legislature effective September 1, 2025, provides: "Any provision of a nondisclosure or confidentiality agreement or nondisclosure or confidentiality provision of an employment agreement, settlement agreement, or any other agreement is void and unenforceable as against the public policy of this state to the extent the provision prohibits a person, including a party, from disclosing an act of sexual abuse or facts related to an act of sexual abuse to any other person." The amount and payment terms of a settlement may still be kept confidential. "Act of sexual abuse" is defined by reference to listed subdivisions of the Family Code's definition of abuse in § 261.001(1) and to listed Penal Code offenses, among them indecency with a child, sexual assault, aggravated sexual assault, sexual performance by a child, specified trafficking offenses, and compelling prostitution (§ 129C.001). The Texas rule is broader than the federal Speak Out Act, which makes unenforceable only nondisclosure and nondisparagement clauses agreed to before a sexual assault or sexual harassment dispute arises (42 U.S.C. § 19403(a)), and so does not reach a settlement signed after the abuse is known.

Two gaps remain. Chapter 129C does not reach physical abuse or neglect. And neither the Texas nor the federal law punishes the person who demands the clause; they make the clause unenforceable, which leaves the demand free and its practical effect on a frightened or exhausted parent intact.

The law already surrounding the gap is substantial. Every person with reasonable cause to believe a child's health or welfare has been adversely affected by abuse or neglect "shall immediately make a report" (Fam. Code § 261.101(a)), and the duty applies without exception to persons whose communications are otherwise privileged, including attorneys (§ 261.101(c)). A professional's knowing failure to report is a Class A misdemeanor and a state jail felony "if it is shown on the trial of the offense that the actor intended to conceal the abuse or neglect" (§ 261.109(c)). Offering a benefit to a witness to withhold testimony or information in an official proceeding is tampering with a witness, a third-degree felony (Penal Code § 36.05); concealing a record or thing, knowing an offense was committed, with intent to impair its availability in a later investigation is a third-degree felony (§ 37.09(d)(1)); and hindering prosecution reaches one who harbors, conceals, or aids another (§ 38.05). A new offense would fit within this structure as its missing piece.

The author's recommendation has two parts. First, extend § 129C.002 to physical abuse and neglect as defined in Family Code § 261.001, so that no agreement can silence any form of child abuse. Second, make it a felony knowingly to offer, demand, or accept a benefit in exchange for an agreement not to disclose abuse or neglect of a child, with intent to prevent a report to the Department of Family and Protective Services or to law enforcement, while leaving untouched the confidentiality of settlement amounts that § 129C.002 already permits. Because such an offense punishes an agreement, which is conduct carried out in words, it must be drafted around conduct and intent. The governing principle is old and settled: "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language" (Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949)). A statute that reaches the purchase of silence about a crime against a child, with intent to prevent its report, punishes the purchase, not the speech.

10.11 The author's recommendations

The findings of this chapter support a coherent set of recommendations. They are the author's, stated as his, and each is drafted within the boundaries found above: federal immunity in § 1983 suits is untouched; the prosecutor's discretion is preserved; good faith is protected at every point; and the culpable state required is knowing or intentional conduct.

1. A new offense of official interference with the parent-child relationship, defined by conduct and not by rulings. A public servant who, acting under color of office or employment, knowingly makes a false statement in an official record; conceals or destroys a record or a recording; acts outside the jurisdiction of the court or office; retaliates against a person for a report; knowingly obstructs court-ordered possession; or coerces or procures a plea by misstating its family-court consequences, would commit a felony graded above the Class A misdemeanor of § 39.03. The offense expressly does not reach a ruling made in good faith within jurisdiction. It reaches judges and court appointees for the listed conduct, and it requires no prior finding by a court or by the Commission. It would apply only to conduct after its effective date (Tex. Const. art. I, § 16). Through § 33.001(b)(2) and § 1-a(8)(i), it would also give the Commission a defined and public basis for action against a judge.
2. A state cause of action with defenses set by statute. A civil action under Texas law against court appointees and against officials performing administrative functions, for injury to the parent-child relationship caused by conduct within the culpable states of § 107.009(b), with enhanced damages for knowing and intentional conduct on the model of Bus. & Com. Code § 17.50(b)(1), clear and convincing proof, fee shifting against groundless or harassing suits on the model of § 17.50(c), and an express statement, as Taylor requires, that derived judicial immunity and attorney immunity do not apply to the claim. The action reaches appointees and administrative acts only. It proposes no liability for judicial rulings, and the separation-of-powers question for judges is flagged as unresolved.

3. Narrowing and clarifying § 107.009. A statement that § 107.009 is the exclusive immunity of a chapter 107 appointee, ending the conflict with Delcourt; preservation of absolute immunity for testimony and for good-faith reports, the functions Briscoe and § 261.106 protect; and a condition of appointment that the appointee carry liability coverage, so that the injured parent's remedy does not depend on the appointee's assets.
4. A mirror penalty for knowing false reports. The punishment range of the offense falsely alleged, for a report made knowingly and with intent to deceive, capped at the first-degree range, with no registration, with the good-faith immunity of § 261.106 restated, and with charging reserved to the prosecutor.
5. A duty to refer perjury. A judicial duty to refer a finding of knowingly false material testimony in a suit affecting the parent-child relationship to the prosecuting attorney, and conforming amendments to Rule 8.03 and Canon 3D requested from the Supreme Court of Texas.
6. Extension of the nondisclosure rule. Chapter 129C extended to physical abuse and neglect, and a felony for knowingly demanding, offering, or accepting a benefit for silence about child abuse with intent to prevent its report.
7. 7. A plea failsafe. No plea, deferred adjudication, plea agreement, stipulation, agreed order, or default is evidence of, or a basis for, any finding of abuse, neglect, endangerment, or unfitness in a suit affecting the parent-child relationship or for any reduction of a parent's time; a reduction on the ground of alleged criminal conduct may rest only on a jury's finding; no term concerning possession, access, or conservatorship may be bargained for in a plea; and the court and counsel must admonish a parent in writing that a plea cannot be used to reduce the parent's time. The section regulates the civil effect of pleas and does not limit charging, bargaining, or the prosecutor's exclusive function. Chapter 12 states it in full.

The author's eighth measure follows from § 10.8 and is a matter of structure rather than offense: a statute placing a duty on the prosecuting attorney, on a magistrate's finding of probable cause for a specified offense against a child, to present the matter to a grand jury within sixty days or file written reasons with the district judge, with no command to prosecute and no dismissal penalty. A joint resolution authorizing presentation by a prosecutor other than the local one is offered as insurance, not as a requirement. Chapter 12 places each of these in the sequence of bills to the 90th Legislature.

10.12 Objections

Two objections remain after the answers given in §§ 10.4 and 10.6. The first is that liability of any kind will chill the hard calls that officials and appointees must make about children. Every proposal here requires knowing or intentional conduct, or, for the civil action, the culpable states the Legislature itself named in § 107.009(b). An official who acts in good faith, or who errs, faces nothing new. The proposals do not reach the hard call; they reach the knowing wrong, which present law grades as a misdemeanor or does not reach at all. The second is that

judicial independence requires immunity. Nothing here alters the federal immunity of judges in § 1983 suits, which Texas cannot alter, and no liability is proposed for a judge's good-faith ruling within jurisdiction, and conduct that is not a ruling is left to the criminal law and to the Commission the voters restructured in 2025. Independence has never protected a judge who commits a crime. The proposal defines one more crime, by conduct and not by ruling, and judges are subject to it for that conduct as everyone else is.

10.13 What follows

Texas cannot change federal immunity, but it controls its own causes of action, its own appointee immunity, its own criminal grades, its own reporting duties, and, since 2025, a disciplinary commission that cannot resolve criminal allegations in private. What it lacks is an offense that names knowing interference with the parent-child relationship by officials and a remedy that a parent can count on. Every one of these measures depends on evidence that something happened in a courtroom, and in many Texas family courts no reliable record of what happened exists. Chapter 11 turns to transparency: the recording of proceedings, written findings, outcome data, and access to records, without which accountability remains a promise that no one can test. # Chapter 11. Transparency

11.1 Five needs, one deficit

Chapter 10 examined what consequences Texas law attaches to conduct that destroys a parent-child relationship and found them narrow, hard to reach, and in places foreclosed by immunity. Every accountability mechanism described there shares one precondition. A remedy for misconduct requires proof of the conduct, and proof requires a record. A sanction for a wrong ruling requires knowing what the ruling was and why it was made. A legislative correction requires knowing how often the problem occurs. Accountability without transparency is a promise addressed to people who cannot see what was done to them.

This chapter organizes the transparency problem around five needs. The first is the need to know what happened: a complete record of what was said and done in a proceeding. The second is the need to know why: written reasons for a ruling, stated by the person who made it. The third is the need to correct an error, which depends on the first two, because a reviewing court can reverse only what the record shows and can assess only reasons that were stated. The fourth is the need to know how often: data on outcomes, collected the same way in every court, so that the Legislature can tell whether the law it wrote is applied as written. The fifth is the need to know how the system is run: access to the administrative records that show who is assigned, who is appointed, and who is paid.

The Texas family law system falls short on each of the five, and the shortfall lies in the text of its statutes and rules, not only in practice. The statutes and rules read for this chapter make the record optional in many proceedings, make reasons available only to the party who knows to ask in time, collect court data that cannot answer the questions the Legislature most needs answered, and place the administrative records of the courts largely outside the public's reach.

The sections that follow take each need in turn and end with the author's recommendations. Family Code text is the Legislature's text rendered Dec. 13, 2025; Government Code text was rendered Oct. 1, 2026; the Rules of Judicial Administration are the file dated July 1, 2026.

11.2 The record

11.2.1 What the Code requires

The Family Code's rule for contested hearings in suits affecting the parent-child relationship is that "proceedings shall be as in civil cases generally," and that "a record shall be made as in civil cases generally unless waived by the parties with the consent of the court." Tex. Fam. Code § 105.003(a), (c). The same section allows the court, "on the agreement of all parties," to limit attendance "to only those persons who have a direct interest in the suit or in the work of the court." Id. § 105.003(b). The default, then, is a record and an open hearing, and both can be given up.

Before an associate judge, the default reverses. "A court reporter may be provided during a hearing held by an associate judge," and one "is required to be provided" only when the associate judge "presides over a jury trial or a contested final termination hearing." Id. § 201.009(a). A party may arrange for a reporter if one is not provided, and otherwise "the record may be preserved by any means approved by the associate judge." Id. § 201.009(b), (c). Chapter 4 described the associate-judge system, to which every Title IV-D case is referred by general order rather than case by case. Id. § 201.101(d). In those proceedings the existence of a verbatim record depends on whether someone asked for and paid for one, or on what the associate judge approves.

11.2.2 Where the Legislature already requires a camera

The Legislature has already decided that some parts of a custody case must be recorded on video. A child custody evaluator "shall create an audiovisual recording of each interview the evaluator conducts with a child who is the subject of a suit seeking conservatorship of, possession of, or access to the child," and the recording "is confidential and may not be released after the completion of the suit … except by court order for good cause shown." Id. § 107.112(b-1). The statute thus requires a camera in the evaluator's office, preserves the recording for the case, and protects it afterward by a court-order rule. It does not require any recording at all of the hearing in which an associate judge decides, on that evaluator's report, where the child will live.

The juvenile code goes further on openness. In juvenile proceedings "the court shall open hearings under this title to the public unless the court, for good cause shown, determines that the public should be excluded," with hearings for children under 14 closed unless opening them better serves the child or the public. Id. § 54.08(a), (c). A child accused of delinquent conduct is thus presumptively tried in public, with a protective exception for young children, while a parent whose possession of a child is decided before an associate judge may have no verbatim record of the decision. The asymmetry states no principle that the text discloses. So far as the

text shows, it follows from where each rule was written.

11.2.3 What has been tried, and what federal law allows

No bill in the 89th Legislature requiring audio or video recording of family proceedings was found. The nearest measures pointed in other directions. H.B. 4139 would have restricted videography in proceedings involving child or adult victims, and S.B. 1538, as substituted, would have directed the Office of Court Administration to study digital court reporting. The Legislative Budget Board scored both at no significant fiscal implication, and both died in the second house. The State's own budget office therefore found the direct cost of studying recorded proceedings negligible, and the Legislature did not act on it.

Federal law does not stand in the way. The federal child abuse prevention grant conditions confine the release of child abuse and neglect records to listed recipients, but they state that nothing in the confidentiality provision limits "the State's flexibility to determine State policies relating to public access to court proceedings," provided the policy ensures the safety and well-being of the child, parents, and families. 42 U.S.C. § 5106a(b)(2). Recording dependency and custody hearings, and deciding who may see the recording, is a choice federal law leaves to Texas.

A party platform plank addresses recording and written findings (Republican Party of Texas, 2026 Platform, plank 178). It is a party position, not law, and it is noted for the record only.

11.2.4 Privacy, answered

The strongest objection to recording family proceedings is privacy. Custody hearings expose children's health, parents' finances, and allegations that may prove false. A recording of a hearing in which a child's sexual abuse is alleged is not a document anyone should be able to download.

The objection is an argument for controlling access to the record, not for declining to make one, and Texas law already contains the tools. The evaluator-recording statute makes the recording confidential after the suit and releasable only "by court order for good cause shown." Tex. Fam. Code § 107.112(b-1). The investigation-records statute permits disclosure only after a motion, notice, a hearing, and in camera review, and only if disclosure is "essential to the administration of justice" and not likely to endanger the child or others. Id. § 261.201(b). Access to family files is governed by statute and order and not by a general sealing rule for civil court records: the record and the hearing in a suit affecting the parent-child relationship are governed by Family Code §§ 105.003 and 109.002, and access to information collected or maintained by the judiciary is governed by Government Code § 552.0035.

The design follows from those models. Hearings are recorded in phases by court size, in audio and video, or in audio alone where no child is present, and a fiscal note is required before the effective date. The recording is part of the record of the case, available to the parties and their counsel and to any reviewing court. Public access is restricted by statute in the manner of Section 107.112(b-1): the recording is confidential, released only by court order for good cause,

with a child's testimony and identifying information sealed. Parties may not waive the making of the record, because the record protects the reviewing court and the public as well as the parties. The privacy interest is real, and it is protected by deciding who may see the record. Nothing about privacy requires that the record not exist.

11.3 Reasons

11.3.1 Findings on request

A Texas trial judge who decides a case without a jury owes written findings of fact and conclusions of law only if a party asks for them. "In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law," and the request "shall be filed within twenty days after judgment is signed." Tex. R. Civ. P. 296. If the court does not respond, the requesting party must file a notice of past-due findings to preserve the complaint. Tex. R. Civ. P. 297. Where findings are made but omit an element, omitted unrequested elements may be presumed in support of the judgment if one element of the ground was found. Tex. R. Civ. P. 299. The procedure rewards the party who knows it and penalizes the one who does not.

The Family Code adds a short list of mandatory findings and leaves the most consequential decision on the request track. A court "may limit the rights and duties of a parent appointed as a conservator if the court makes a written finding that the limitation is in the best interest of the child." Tex. Fam. Code § 153.072. Support findings are required when support varies from the guidelines. Id. § 154.130(a)(3). An order granting a grandparent access over a parent's objection must state the statutory elements with specificity. Id. § 153.433(b). But where possession is contested and the order varies from the standard possession order, the court states "the specific reasons for the variance" only "on request by a party," and the request "must conform to the Texas Rules of Civil Procedure." Id. § 153.258(a), (b). The temporary orders section, under which a child's living arrangements are set while the case is pending, contains no findings requirement at all. Id. § 105.001.

The Code is not unfamiliar with mandatory reasons. When the State removes a child, a court that does not return the child at the initial hearing "must describe in writing and in a separate section the reasonable efforts" made to prevent removal, and a court that keeps the child after the adversary hearing must describe in writing the efforts made and the continuing danger found. Id. §§ 262.107(c), 262.201(g-2). Federal law requires that the removal findings be explicit, made case by case, and stated in the order, and rejects orders that merely recite State law. 45 C.F.R. § 1356.21(d). Texas therefore requires reasons when the State takes a child, where federal money depends on them, and does not require reasons when a court decides how much time a child will spend with each of two fit parents. A parent's claim to an explanation appears to depend on whether anyone in Washington is paying for it.

11.3.2 Who loses findings

The request rule falls hardest on parents without lawyers. In fiscal year 2025 the petitioner

represented himself or herself in 85,539 of the family cases disposed of in Texas district courts (Office of Court Administration, 2025, pp. 6 to 7; cited below as OCA). The report does not count respondents without counsel, and it does not say how many of those cases were contested; the figure is a court-reported administrative count (Grade C). It is enough to show the scale of the population for whom, in the author's judgment, a twenty-day request deadline under a rule of civil procedure is likely to operate as a forfeiture rule; no source read counts how often self-represented parents request findings. A self-represented parent who loses a possession dispute and does not file a Rule 296 request has no findings to appeal from and, under Rule 299, may face presumed findings he never saw.

The jury does not fill the gap. In the same year Texas district courts disposed of 282,099 family cases: 31.4 percent by agreed judgment, 24.2 percent after a non-jury trial, and 109, or 0.04 percent, by jury verdict (OCA, 2025, pp. 6 to 7). Chapter 3 showed that the jury's verdict on conservatorship binds the court. Tex. Fam. Code § 105.002(c). That protection reaches a vanishing share of cases. In virtually every Texas custody case, the decision is made by one judge or by agreement, which makes the judge's stated reasons the only window into how the best-interest standard was applied.

11.3.3 What findings do

Findings serve each of the five needs at once. They tell the parties why. They give the reviewing court something to review, which matters most in temporary orders, where the only route is mandamus for a clear abuse of discretion, Chapter 4; a reviewing court cannot find an abuse of discretion in reasoning that was never written. They allow outcomes to be measured, because a finding records the ground of decision in a form that can be counted. And they discipline the decision itself. A judge who must write that a parent's time is limited because of specific facts must identify those facts.

The strongest objection is the burden on trial courts, which carry heavy dockets. No source read measures the time cost of mandatory findings in Texas family courts, and this chapter offers no estimate. Two answers are available without one. First, Texas already requires written reasons in removal cases, in limitations on conservators' rights, and in deviations from support guidelines, and the courts that make those findings are the same courts. Second, findings may be short. A finding need not be an essay; it must name the facts relied on and the legal standard applied. The recommendation below permits findings to be stated on the record at the hearing and reduced to a short written order, which is what the Code already asks of a court that limits a conservator's rights.

11.4 Measurement

11.4.1 What Texas collects

Texas collects a great deal of court data, but not the data that would show how the best-interest standard is applied. The Office of Court Administration must annually report, for each district, statutory county, statutory probate, and county court, three performance measures: the

clearance rate, the average time from filing to disposition, and the age of the active pending caseload. Tex. Gov't Code § 72.083(b). The Texas Judicial Council "shall gather judicial statistics and other pertinent information, including for each trial court in this state monthly court activity statistics and case-level information on the amount and character of the business transacted by the court." Id. § 71.035(a). For each trial court in a county with a population of at least one million, the monthly information must include the number of cases assigned, the clearance rate, cases disposed, jury panels, continuances, pleas, cases tried by the judge or a jury, and "the number of cases tried before a visiting or associate judge of the court." Id. The Office "shall publish the information for each court on the office's public Internet website in a searchable format." Id. § 71.035(a-2).

The statute therefore already authorizes case-level collection, per-court publication, and enforcement by mandamus against an official who does not supply the information. Id. § 71.035(c). What it does not require is any outcome variable. The Office reports family cases by case type and by disposition type: agreed judgment, non-jury trial, jury verdict, default, dismissal. No variable records who was named managing conservator, what possession schedule was ordered, whether the order was agreed or contested, or the sex of either parent.

11.4.2 What no one knows

No public Texas dataset found in the research for this report reports conservatorship or possession outcomes by the sex of the parent, by contested versus agreed order, or by judge. Searches of the Office of Court Administration, the Judicial Council, the Access to Justice Commission, and Texas universities found no study of custody outcomes by parent sex. A search is not proof of absence, but the Office's published reports contain no such variable, and the statute does not require one.

Into that vacuum have stepped figures that cannot bear the weight placed on them. The claim circulating on Texas law-firm websites, that fathers receive about a third of parenting time in Texas, comes from Custody X Change, a commercial software vendor that interviewed legal professionals in 2018 about the most common schedule. It is a canvass of opinion, not a count of orders, and it is not cited here as a Texas outcome. The Attorney General's handbook for noncustodial parents states that about 10 percent of noncustodial parents in Texas are mothers; that figure describes the Title IV-D caseload, not contested custody decisions, and it does not separate agreed from litigated orders. The Census Bureau reports that 19.6 percent of custodial parents nationally were fathers in 2016 (U.S. Census Bureau, P60-262); that figure measures living arrangements, not court outcomes, and it is national.

The consequence is that the most contested empirical question in Texas family law, whether the best-interest standard is applied evenly to mothers and fathers, cannot be answered from any public Texas source. Advocates on every side cite numbers, and none of the numbers measures the thing in dispute. The Legislature is asked to choose between claims that no one can test. That is not a reason to believe either side. It is a reason to count.

11.4.3 What Texas should publish

The fix is a data recommendation, and it is the precondition for evaluating every other recommendation in this report. For each final order, and each temporary order, in a suit affecting the parent-child relationship, the clerk should report to the Office of Court Administration, through the monthly case-level reporting Section 71.035 already establishes, the following de-identified fields: the conservatorship designation of each parent; the possession schedule ordered, classified as standard, expanded standard, equal, or other; whether the order was agreed, contested, or entered by default; the sex of each parent; whether each party was represented by counsel; whether a custody evaluation, amicus attorney, or attorney ad litem was ordered, and the fees awarded for each; whether a family violence finding was made; whether a finding was made that a report of abuse or neglect was false or lacking factual foundation under Section 261.107(b) or a report was deemed false under Section 153.013; whether the order was rendered by the elected judge, an associate judge, or a visiting judge; and the time from filing to the order. The Office should publish annual aggregates by court, suppressing cells small enough to identify a family.

Three design rules keep the data honest. First, the data are group data. They can show whether outcomes differ by parent sex within contested cases in a court, but they cannot show why, and they say nothing about any individual case or judge's motive. A difference between groups invites the questions Chapter 1 set out: whether prior caregiving, agreements, or who sought custody explains it. Second, agreed and contested orders must be separated, because most orders are agreed, and a disparity in agreed orders measures bargaining, not adjudication. Third, the data must be collected the same way in every court, which only a statewide statutory duty can ensure.

The cost is not large. The Legislative Budget Board's fiscal note on the 2025 judicial-conduct legislation, as that legislation left the House, scored its court-transparency data system at $254,006 for the Office of Court Administration in fiscal 2026 and $88,206 in fiscal 2027. The enacted conference version carried no fiscal note, so those figures describe the earlier version, and they priced a different data set. They show the order of magnitude: the State's budget office estimated the cost of building a court data system for transparency at about a quarter of a million dollars in its first year.

The State already publishes comparable data for its own child protection agency. The Department of Family and Protective Services posts removals, investigations, confirmed victims, children in substitute care, and exits by type and county on the State's open data portal. A parent can learn how many children were removed in his county last year, and how many went home. He cannot learn how many fathers in contested cases in his county's family court were named joint managing conservators with equal time. The executive branch counts its own work. The judicial branch counts its own speed.

11.5 Access

11.5.1 The Public Information Act and the judiciary

The Public Information Act opens with one of the strongest statements of policy in Texas law: "government is the servant and not the master of the people," and "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Tex. Gov't Code § 552.001(a). The Act is to be "liberally construed in favor of granting a request for information." Id. § 552.001(b). Its definition of a governmental body, however, "does not include … the judiciary." Id. § 552.003(1)(B)(i). Access to information "collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Id. § 552.0035(a).

The rule the Supreme Court has adopted is Rule 12 of the Rules of Judicial Administration. Its stated purpose is "to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary," and it "should be liberally construed." Tex. R. Jud. Admin. 12.1. A records custodian must respond within 14 days, and a person denied access may petition the Administrative Director of the Office of Court Administration within 30 days. Tex. R. Jud. Admin. 12.6(b), 12.9(a), (c).

11.5.2 What Rule 12 does not reach

The rule's reach is defined by what it excludes. A "judicial record" is a record made or maintained by or for a court or judicial agency in its regular course of business "but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case," and "a record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record." Tex. R. Jud. Admin. 12.2(d). Records relating to a judicial officer's adjudicative decision-making, internal deliberations on court administration, and investigations of any person's character or conduct are exempt. Tex. R. Jud. Admin. 12.5(a), (f), (k).

The Office of Court Administration's decisions under the rule show what that means for family courts. District clerks are outside Rule 12 (Rule 12 Decision 26-011), and their case files are reached only through each clerk's own process. The Office has treated a court's case-assignment procedures and its lists of custody evaluators as pertaining to the adjudicative function, and therefore not judicial records subject to the rule (Rule 12 Decisions 19-026, 22-013, 25-012). Reports to the Office containing aggregate statistics are subject to Rule 12 (Decisions 15-002, 16-011). And the rule requires no custodian to create a record that does not exist (Decision 26-005). These are decision summaries published by the Office, and the decisions were read at that level.

The result is a precise gap. A parent who wants to know how cases are assigned among the judges of a county, or who appears on a court's list of custody evaluators and how often each is

appointed, has no right of access under either the Public Information Act or Rule 12, because the records are treated as adjudicative. Aggregate statistics are accessible, but only those that exist, and Section 11.4 showed that the statistics that would answer the important questions do not exist. The rule's purpose clause promises open courts; its definitions place the records a parent most needs to see outside it. The public may see the court's budget and may not see the list from which the court chooses the people who decide what its children need.

11.5.3 The family's own file

The executive side of the system has its own access gap, discussed in Chapter 8. Investigation records in child abuse and neglect cases are confidential and not subject to release under the Public Information Act, Tex. Fam. Code § 261.201(a), but the Department must, on request and subject to its rules, provide the parent with the information concerning the reported abuse or neglect after editing it. Id. § 261.201(g). The statute sets no deadline. In fiscal year 2024 families waited an average of 506 days for records the Department held about them, against 33 days for requests made by subpoena, court order, or discovery (DFPS, 2025, p. 233). The State's own child-protection agency produces records for litigants on a subpoena in about a month and for the family about whom the records were made in about a year and a half.

11.5.4 Who may legislate

The Public Information Act itself contemplates that access to judicial information may be governed by "other applicable laws" as well as by Supreme Court rules. Tex. Gov't Code § 552.0035(a). The Legislature has already imposed reporting duties on courts and court officials by statute, enforceable by mandamus. Id. § 71.035(b), (c). A statute declaring that a court's case-assignment procedures, its appointment lists, and per-court counts of appointments and fees for evaluators, amicus attorneys, and attorneys ad litem are public administrative information falls within that pattern. Whether a particular access mandate would intrude on the judiciary's constitutional functions is a separation-of-powers question that no source read for this chapter resolves, and a bill should be drafted to reach administrative records and aggregate counts rather than deliberations or case files. The proposals below are drafted on that line.

11.6 The recommendations

The author recommends the following, each tied to one of the five needs.

1. Record. Hearings in a suit affecting the parent-child relationship and child protection hearings, before an elected judge, an associate judge, or a visiting judge, are recorded in audio and video, or in audio alone where no child is present. The mandate is phased by court size, beginning with the largest courts, and a fiscal note is required before the effective date. The record may not be waived. The recording is part of the case record, available to the parties, their counsel, and any reviewing court; public access is by court order for good cause, on the model of Family Code Section 107.112(b-1), with a child's testimony and identifying information sealed. Section 201.009(a) is amended so that a

record is required in every associate judge hearing.

2. Reasons. In any ruling that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees against a parent, including a temporary order, the court states in writing the specific facts relied on. Findings are made without request in every such ruling in a contested case and in every ruling in which a party appears without counsel. Findings may be stated on the recorded record and reduced to a short written order. In an agreed order with all parties represented, the parties' agreement and a best-interest statement suffice. Failure to make findings is remedied by remand for findings, and the rule creates no presumption of harm. Section 153.258 is amended to remove the words "on request by a party."
3. Review. The findings requirement applies to temporary orders, so that the accelerated review recommended in Chapter 4 has something to review.
4. Measurement. The Office of Court Administration collects, through the case-level reporting of Government Code Section 71.035, the de-identified fields listed in Section 11.4.3 for every temporary and final order in a suit affecting the parent-child relationship, and publishes annual aggregates by court with small cells suppressed, separating agreed, contested, and default orders.
5. Access. Case-assignment procedures, lists of appointees, and per-court counts of appointments and fees for custody evaluators, amicus attorneys, attorneys ad litem, and guardians ad litem are public administrative information, published annually by the Office of Court Administration. The Department of Family and Protective Services produces a parent's own edited file within the time it takes to answer a subpoena.

11.7 What follows

Transparency does not decide any case, and it does not by itself correct any error. It makes error visible, and it makes the Legislature's later work possible, because a statute that cannot be measured cannot be evaluated. Chapter 12 assembles the recommendations of this and the preceding chapters into the first bills, the joint resolutions they require, the federal and interstate limits they must satisfy, and the sequence in which the 90th Legislature can enact them. # Chapter 12. The Pathway

Chapter 11 established that Texas does not record most of what happens to children in its family courts, does not require the reasons for most custody decisions to be written, and does not publish the outcome data a legislature would need to know whether its statutes work. The chapters before it established why that matters: the Code contradicts itself, its procedures do not match the right Article I, Section 37 now names, the federal measures that finance it count orders, collections, and placements and do not count preserved relationships, and its assessment practices rest on methods the forensic and developmental literature does not support. This chapter turns the argument into a program: the calendar, the design of a Model Family Code, the first bills and the duty or charge each answers, the joint resolutions, the federal and interstate constraints, the fiscal record, the lessons of earlier sessions, and the order of the work. The Family Code text cited in this chapter is the Legislature's rendering of Dec. 13,

2025; the Texas Constitution is the rendering of July 31, 2026.

12.1 The Calendar and the Venues

The program has four audiences and one deadline that cannot move. The Texas Commission on Marriage and Family must deliver its written report, “a summary of the commission’s findings and any legislative recommendations,” to the governor, the lieutenant governor, the speaker, and each member of the Legislature not later than November 1, 2026 (H.B. 3284, 89th Leg., R.S. (2025), § 9). The Commission is abolished, and the Act expires, on December 31, 2026 (§ 10). Bill prefiling for the 90th Legislature opens on November 9, 2026, the first Monday after the general election, and the Legislature convenes at noon on January 12, 2027, the second Tuesday in January of an odd-numbered year (Tex. Gov’t Code § 301.001). The Senate Committee on State Affairs heard its two relevant interim charges on September 14 and 15, 2026, and as of October 8, 2026 has posted no interim report.

The Constitution sets the rhythm of the session: the first thirty days are “devoted to the introduction of bills and resolutions,” and in “the succeeding thirty days” the committees “shall hold hearings to consider all bills and resolutions and other matters then pending” (Tex. Const. art. III, § 5(b)), unless a house reorders its business by a four-fifths vote (§ 5(c)). A bill not drafted, checked, and filed in the first month competes for a hearing against everything that was.

The third venue is the Sunset Advisory Commission’s review of the Department of Family and Protective Services. As of October 8, 2026, the Sunset Commission had published no staff report on the Department; its meeting calendar lists public testimony on the Department for November 18 and 19, 2026 and the Commission’s decision for December 15 and 16, 2026, both marked tentative. Its recommendations travel in the Department’s Sunset bill, the one vehicle in the session certain to move, and the child-protection recommendations belong there.

What follows is a division of labor. The Commission’s report carries findings and the principle of each recommendation, because its duty is to “make recommendations to the legislature” (H.B. 3284, § 7(3)), not to draft for it; the Senate committee’s interim report can carry the same findings into its chamber; and the bills must be ready for prefiling in November. A program that waits for the Commission’s report to begin drafting will be filed in February, heard in March if at all, and remembered as the reform that was right in principle.

12.2 A Model Family Code: The Foundation and the Design Principles

The report does not propose that the 90th Legislature repeal the Family Code and enact a new one in a single session. It proposes something more durable: that this report supply the evidentiary foundation and the design principles of a Model Family Code, that the first bills amend named sections of the existing Code and keep their numbers, and that a full replacement follow as a later project that preserves every federal and interstate obligation the present Code carries.

The reason is practical, not timid. The Family Code as rendered in December 2025 runs to 81

chapters and more than 2,300 sections, each carrying case law and forms and, in the chapters that implement Titles IV-D and IV-E, federal plan approvals. Renumbering everything at once would strand that interpretation and put the State's federal plans at risk on a date set by the drafting calendar. Amending named sections lets a judge, a lawyer, and a parent find the change where the old rule was, and lets the Legislature see what each amendment does to the text it replaces, which is the discipline this report asks of everyone else.

The Model Family Code is the destination. It is built on eight design principles, each earned in an earlier chapter.

1. The object of the Code is each child's relationship with each fit parent, and every rule is judged by its effect on that relationship (Chapters 2 and 3).
2. Any departure from equal possession by a fit parent is proved by clear and convincing evidence, and no restriction rests on an allegation the court has no means of testing (Chapters 3 and 6).
3. Every consequential ruling is written, states its reasons and the evidence relied on, and is reviewable while review can still matter (Chapter 4).
4. Every proceeding that can change where a child lives is recorded, and the record belongs to the parties (Chapters 4 and 11).
5. Experts who inform custody decisions meet one published evidence standard, use validated measures, and are assigned without regard to who referred them (Chapter 6).
6. Money follows outcomes for children, and the State reports what it spends against what children experience (Chapters 5 and 8).
7. Knowing or intentional conduct that destroys a parent-child relationship carries a real consequence, and good faith is protected (Chapter 10).
8. Every rule is measured after it takes effect, and the measurement is published (Chapter 11).

Those principles generate the first bills and constrain them: a first bill that could not survive inside the eventual Model Family Code should not be filed.

12.3 The First Group of Bills

The first bills are grouped by subject, each tied to the duty in Section 7 of H.B. 3284 or the Senate interim charge it answers, because the Commission and the committee asked for recommendations in those terms. Appendix C summarizes them.

12.3.1 Divorce Grounds

The Code permits a court to grant a divorce "without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation" (Tex. Fam. Code § 6.001), and to grant one "if the spouses have lived apart without cohabitation for at least three years" (§ 6.006). The ground turns on discord the petitioner asserts, and the statute names nothing a respondent could disprove. The lead recommendation of this report is to

repeal both sections. Repealing one leaves the other, and a no-fault route that survives in either section is a no-fault route.

The bill keeps cruelty as a ground, because "[t]he court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable" (§ 6.002), and it adds an express ground for family violence or abuse of a child, with a referral of the alleged conduct to the prosecuting attorney for investigation, a good-faith safe harbor for the spouse who alleges it, and no requirement that the prosecutor act. The added ground matters for the reason Chapter 13 develops: the best causal evidence that unilateral divorce protected spouses identifies exit from violent marriages as one of its channels, and an express violence ground keeps part of that exit open. Recrimination and adultery are already abolished as defenses (§ 6.008(a)). The bill adds no mutual-consent ground, no other new ground, and no exemption, and it creates no ground that requires no reason: spouses who both want the marriage ended proceed on the surviving grounds by agreed judgment. The bill applies only to suits filed on or after its effective date.

If repeal stalls, the fallback, offered as fallback only (if repeal fails), strips the no-fault filer of the advantages the present Code gives the spouse who leaves: no temporary orders in a suit filed on a no-fault ground (fallback only, Section 12.3.3), no public money for the filer's counsel, advocacy, or services beyond the waivers due process requires, and a statement that these consequences are the price of unilateral exit, avoidable by agreement. The fallback is designed to make the no-fault ground obsolete in practice if the Legislature will not repeal it in law.

This bill responds to the Commission's instruction to recommend policies to "reduce the incidence of divorce and family dissolution" (H.B. 3284, § 7(3)(B)(ii)) and to its duty to identify state laws "that discourage Texans from marrying and raising children" (§ 7(1)). The report predicts nothing about the effect of repeal on the rate of divorce, and it asks the Legislature to require a measured review of that effect four years after the effective date. A law that lets one spouse dissolve a marriage on a statement the other cannot contest is a law about the security of the bargain every marrying couple makes.

12.3.2 An Equal-Parenting Presumption, Rebuttable by Clear and Convincing Evidence

Texas already presumes that parents should be joint managing conservators: "It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child" (Tex. Fam. Code § 153.131(b)). It then presumes that the standard possession order "provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator" and "is in the best interest of the child" (§ 153.252). The first presumption describes two parents who share the child. The second gives one of them, within one hundred miles, the first, third, and fifth weekends of each month and a Thursday evening during the school term (§ 153.312(a)). The Code thus presumes equality in title and inequality in time, and calls both the child's best interest.

The bill replaces the possession presumption with the following: "It is presumed that equal or

substantially equal possession by each fit parent is in the child's best interest. The presumption allocates the burden of proof and does not displace the best-interest standard, which remains the primary consideration. It is rebuttable only by clear and convincing evidence, stated in written findings of the specific facts relied on. A fit parent is a parent who has not been found, on those findings, to endanger the child's physical or emotional welfare and who is willing and able to exercise possession." Section 153.004 family-violence findings are unchanged and displace the presumption. The standard is not foreign to Texas. In 2025 the Legislature provided that, in a suit between a parent and a nonparent, the nonparent may overcome the presumption that a parent acts in the child's best interest only "by proving by clear and convincing evidence that denial of the relief requested by the nonparent would significantly impair the child's physical health or emotional development," and it required the court to state "the specific facts that support" that finding (§ 153.002(c), as amended by S.B. 2052, 89th Leg., R.S. (2025)). The bill applies the same standard, and the same duty of specific findings, to the question of how much of a child's life each fit parent may share. The standard is the one the State meets before it severs a parent from a child (Santosky v. Kramer, 455 U.S. 745 (1982)), and art. I, § 37 now names the parent's right fundamental. If a crime or harm is serious enough to interfere with a fit parent, the State proves it.

The burden of rebuttal is the decisive design variable. Kentucky (2018), West Virginia (2022), Florida (2023), and Missouri (2023) enacted equal-time presumptions rebuttable by a preponderance of the evidence; Arkansas (2021) enacted a presumption of joint custody, defined as an approximate and reasonably equal division of time, that a court may set aside on clear and convincing evidence (Ark. Code Ann. § 9-13-101(a)(1)(A)(iv), (a)(5)). Texas should not copy the weaker standard. A presumption rebuttable by a preponderance has a weaker effect, because equal time gives way whenever the evidence against it is merely ordinary. The bill creates one standard for every departure from equal possession, clear and convincing evidence, and no lower tier.

Every enacting State paired its presumption with a violence exception, and the Texas bill does the same by leaving Section 153.004 untouched. That section already bars joint managing conservatorship on credible evidence of a history or pattern of child neglect or of physical or sexual abuse by one parent against the other parent, a spouse, or a child (§ 153.004(b)), and bars access by a parent shown to have a recent history or pattern of family violence unless the court makes protective findings (§ 153.004(d), (d-1)). The presumption governs fit parents. Section 153.004 governs the others.

For the youngest children the bill does not adopt the under-three exemption that earlier Texas bills carried. It provides that for a child under twelve months the court shall order a stepped schedule of increasing frequency and duration of possession by each fit parent, moving toward equal time by the child's second year, adjusted only on findings specific to the child. The schedule is the same whichever parent has been the primary caregiver. Chapter 13 explains why the evidence on infant overnights supports neither a categorical bar nor indifference to the child's age. The bill also extends the presumption to temporary orders, which Section 105.001(g) already does for the standard possession order.

The bill answers the Senate charge to "[m]ake recommendations to ensure Texas families have access to fair and consistent procedures in family courts and truly prioritize the best interests of children," and the Commission's duty to recommend policies that "support and increase the formation of strong, lasting marriages and healthy family connections" (H.B. 3284, § 7(3)(B)(i)).

12.3.3 Temporary Orders

Temporary orders decide where a child lives while a case is pending, which in a contested case can be longer than the child remembers the home before it. The Code removes them from ordinary review: "Temporary orders rendered under this section are not subject to interlocutory appeal" (§ 105.001(e)); divorce temporary orders, "except an order appointing a receiver," are "not subject to interlocutory appeal" (§ 6.507). The statute requires notice and a hearing (§ 105.001(b)) but, as read, no findings. A parent's only route is mandamus, which issues for a clear abuse of discretion with no adequate remedy by appeal. The Supreme Court of Texas has granted that relief when temporary orders gave nonparents possession over a fit parent's objection, reasoning that "[s]uch a divestiture is irremediable" (In re Derzapf, 219 S.W.3d 327, 335 (Tex. 2007) (per curiam)). The word applies with equal force when the divestiture runs from one fit parent to the other.

The bill does two things. As a fallback only (if repeal fails), in a suit filed on a no-fault ground, it abolishes temporary orders on conservatorship and possession; the status quo of the marriage governs until the case is decided, protective orders and emergency removal remain available on their own terms, and a thirty-day emergency track with written findings keeps "no temporary orders" from meaning "no order", and the filer who chose to dissolve the household bears the cost of the interval. In every other suit, it requires the written findings of Section 12.3.4 for any temporary order that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees, and grants an accelerated appeal of any temporary order that changes conservatorship, restricts possession or access, restricts a parent's speech, or awards fees, on an expedited schedule and with no automatic stay. The Legislature has already written the model: an order pending appeal may be reviewed "by: (1) petition for writ of mandamus; or (2) proper assignment in the party's brief" (§ 109.001(b-5)). The bill extends that second door to the orders that matter most.

This answers the Senate charge's directive to identify inefficiencies "that result in unpredictable timelines." An order that sets a child's life for a year and cannot be reviewed for a year is the purest example the Code contains.

12.3.4 Findings and Recording

Texas trial judges in non-jury cases owe written findings only when a party asks for them within twenty days after judgment (Tex. R. Civ. P. 296), and the Family Code adds a short list of mandatory findings while leaving the most consequential one optional. The court must state its reasons for a possession order that varies from the standard order only "on request by a party" (Tex. Fam. Code § 153.258(a)). The reasons for deciding how much of a childhood each parent will share are thus written down only for the parent who knew to ask, and in fiscal year 2025

the petitioner represented himself or herself in 85,539 district court family cases (Office of Court Administration, District Courts Activity Detail FY 2025, pp. 6 to 7).

The bill requires that, in any ruling that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees against a parent, the court state in writing the specific facts relied on. Findings are made without request in every such ruling in a contested case and in every ruling in which a party appears without counsel. In an agreed order with all parties represented, the parties' agreement and a best-interest statement suffice. Failure to make findings is remedied by remand for findings, and the bill creates no presumption of harm. It tracks text the Code already uses where it requires "a written finding that the limitation is in the best interest of the child" before a court limits a parent-conservator's rights (§ 153.072) and requires a nonparent's order to state "the specific facts" supporting it (§ 153.002(c)). The Legislature's authority to require findings is supported by Gov't Code § 22.004: the Supreme Court's rulemaking power in civil actions extends to practice and procedure "except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant," and its rules "remain in effect unless and until disapproved by the legislature" (Tex. Gov't Code § 22.004(a), (b)).

The bill also requires that hearings in a suit affecting the parent-child relationship be recorded, in phases by court size, by audio and video or by audio alone where no child is present, with a fiscal note required before the effective date and with the recording held by the clerk, available to the parties and their counsel, and protected against public release of any image of a child. Before an associate judge, "[a] court reporter may be provided," and one "is required to be provided" only for a jury trial or a contested final termination hearing (Tex. Fam. Code § 201.009(a)). Federal child-abuse grant law does not stand in the way; it provides that nothing in its confidentiality clause limits "the State's flexibility to determine State policies relating to public access to court proceedings," so long as the policy ensures the safety and well-being of the child, the parents, and the family (42 U.S.C. § 5106a(b)(2)). Access to family files remains governed by Family Code §§ 105.003 and 109.002 and Government Code § 552.0035. Recording is the precondition of most other accountability measures, because a finding cannot be reviewed against testimony no one preserved.

The bill answers the Senate charge for "fair and consistent procedures" and the Commission's duty to identify policies "detrimental to the promotion of lasting marriages, family formation, and child rearing" (H.B. 3284, § 7(3)(A)), which cannot be identified when their reasons are never written.

12.3.5 Associate Judges and the De Novo Window

A referring judge may send "any aspect of a suit" under Title 5 to an associate judge (Tex. Fam. Code § 201.005(a)). A party who wants the elected judge must file a written request "not later than the third working day after the date the party receives notice of" the associate judge's report or temporary order, and must "specify the issues that will be presented" (§ 201.015(a), (b)). In Title IV-D cases the associate judge is appointed by the regional presiding judge for a four-year term that may be terminated at any time, all IV-D cases are referred by general order,

and an unchallenged proposed order "shall become the order or judgment of the referring court by operation of law without ratification by the referring court" (§§ 201.101(b), (d), 201.1041(a)). The Supreme Court of Texas upheld the IV-D associate judge's authority to modify conservatorship when the modification relates to support, describing the de novo hearing as the parties' protection (Office of the Att'y Gen. v. C.W.H., 531 S.W.3d 178 (Tex. 2017), slip op. at 7 to 8, construing the prior Code).

The bill does not argue that the office is unconstitutional; C.W.H. decided a question of statutory authority, and the bill accepts the Legislature's power to create the office. It addresses what the Legislature allowed the office to decide, on what clock, and with what review. It provides that a contested conservatorship or possession question is decided by the elected judge unless every party consents in writing to the associate judge; it ends automatic referral of conservatorship issues that arrive attached to a support motion, while Title IV-D referrals for the establishment, modification, and enforcement of support stay with the associate judge, so that the change reaches conservatorship and possession only; it lengthens the de novo window from three working days to a period measured in weeks; and it requires a record of every associate-judge hearing (Section 12.3.4). Its effective date is twenty-four months after enactment, with a transition clause that keeps every finding Title IV-E requires on time and keeps the IV-D expedited-process timeframes, under which 75 percent of orders must be established within six months and 90 percent within twelve months of service (45 C.F.R. § 303.101). The federal text read for this report states no requirement that the presiding officer be a non-judge.

The Legislative Budget Board has priced this class of position before: its note on H.B. 3297 (85th Leg., R.S. (2017)), which would have repealed the child protection court program, estimated 43 full-time positions for associate judges and coordinators and savings of $3.3 million to $4.4 million a year. That is the cost of the positions, not the cost of moving their work to elected judges, and the bill must carry its own note. The question is one of capacity, which a fiscal note can answer, not of principle, which Texas answered when it chose to elect its district judges. The bill answers the Senate charge's concern with "unnecessary delays" and "fair and consistent procedures." Three working days is not a review window. It is a filing deadline that a parent without counsel may learn of only after it has passed.

12.3.6 Evaluations and the Standard Protocol

The Senate charge names "repetitive child evaluations." The Code's text explains the repetition. A child custody evaluator must hold a master's degree in a human services field and a license, complete supervised experience and a number of supervised evaluations, and receive specified training (Tex. Fam. Code § 107.104), and the evaluator must "follow evidence-based practice methods and make use of current best evidence" (§ 107.108(c)). No subsection names research design, psychometrics, or inference, and no subsection defines the evidence-based method the evaluator must follow. An evaluation built on a method no statute specifies can always be answered by another built on a different one. The criticism is of what the statute lists, not of licensed evaluators.

The bill replaces the open-ended evaluation in contested cases with a Standard Protocol

Evaluation stated by criteria, not by product: validated attachment measures scored under their published manuals by reliability-certified coders, with qualifying instruments listed in a non-exclusive schedule outside the operative text of the statute; intelligence and personality testing only on a documented concern; scorers assigned at random from a state-certified pool and blind to the allegations; every session recorded; a party's right to have a qualified reviewer examine the full file and raw data; a qualification gate stated as competencies (measurement and research methods, child development, and the instrument's published reliability standard), met by a research degree with a thesis or dissertation or by an equivalent degree, or by a licensing-board path with certification, with current evaluators grandfathered for the sunset period; and a sunset date after which no court admits an evaluation by a person who does not meet the gate. The measures are validated as measures of attachment; they are not validated as a basis for dividing time. The protocol therefore produces an input to the court's findings, never a recommendation on custody. The evaluator may file a descriptive report and may not offer an ultimate recommendation on conservatorship or possession. A successive full evaluation issues only on a written finding of good cause. The Legislature added an evaluator qualification by statute as recently as 2025 (§ 107.104(f), added by H.B. 2340, 89th Leg., R.S.).

The author has a commercial interest in this bill, disclosed here as in the Statement of Interest. He codes the Adult Attachment Interview and administers the Attachment Q-Sort commercially. For that reason the bill names criteria and no provider, assigns scorers at random from a state pool, and bars any person who sells training, coding, scoring, or administration services for an approved instrument, or who holds a financial interest in one, from serving as an appointee, vendor, or pool administrator under the section. The bar is a rule that applies to everyone, including the author. No public count of reliability-certified coders exists, so the statute requires the pool administrator to publish one and requires open-access reliability training, so that the pool cannot be closed. Any qualified reviewer may serve as a reviewer of evaluators' work.

12.3.7 Abuse Allegations: Investigation, Jury Finding, and Time-Back

Chapter 6 found that civil family courts decide abuse allegations on a preponderance of the evidence, and that no method validated for family courts is routinely required to test them. The family court keeps its emergency safety orders, and they come first: immediate protection remains available on a corroborated showing of imminent danger, for no more than fourteen days without a hearing with findings (Tex. Fam. Code § 83.001). The bill then refers any allegation of a felony that endangers a child, raised in or alongside a suit affecting the parent-child relationship, for investigation on a fast track, and custody merits are stayed or expedited and are not decided on a bare allegation. A parent's time may be reduced on the ground of alleged criminal conduct only on a jury's finding: a conviction by jury verdict, or a unanimous jury finding in the family case by clear and convincing evidence. Where only a credible-evidence showing exists, restriction is temporary and subject to a hearing within fourteen days with findings, and a final hearing must be held; if the allegation ends without a jury finding, the time-back rule below applies. The bill carries the child-witness protections that make such trials workable: a recorded forensic interview, closed-circuit testimony, and a closed courtroom for

the child's testimony. Section 12.3.15 states the plea failsafe that protects this path.

The bill also adds the time-back rule as a bill element. If an allegation of abuse or neglect made in a suit affecting the parent-child relationship is not found by a jury, on a final hearing, or is dismissed, withdrawn, or otherwise unsubstantiated, the accused parent is awarded make-up possession equal to twice the time lost to any restriction imposed because of the allegation, taken in blocks of the parent's choosing within twenty-four months, in addition to the equal-possession presumption and enforced as possession. The same rule applies to time lost to any unfounded allegation of any kind. The purpose is to make false and unsubstantiated allegations cost the accuser the advantage the allegation was meant to buy. Real, substantiated findings keep every protection the Code now gives; only an allegation that fails triggers make-up time. An emergency safety order stays available, and the final hearing that follows it must be held; when the order ends without a jury finding, the accused parent's lost time is made up at twice its length.

The present Code already punishes knowing falsity. A person who, "with the intent to deceive, . . . knowingly makes a report as provided in this chapter that is false" commits a state jail felony (Tex. Fam. Code § 261.107(a)); a party who reports abuse "that the reporting party knows lacks a factual foundation" in a pending suit faces a civil penalty "not to exceed $500" (§ 153.013(a), (c)). The bill adds a mirror penalty for a convicted knowing false report: the same range as the offense falsely alleged, capped at the first-degree range and protected by the same good-faith immunity that exists now, charging by a prosecutor only, and no sex-offender registration attached to the mirror offense. Federal law requires States receiving child-abuse prevention grants to provide immunity for "individuals making good faith reports" (42 U.S.C. § 5106a(b)(2)(B)(vii)) and contemplates disclosure of a reporter's identity where a court finds "reason to believe that the reporter knowingly made a false report" (§ 5106a(b)(3)). A penalty limited to knowing falsity, with good faith protected in terms, fits inside that requirement.

One constraint is constitutional: the Legislature may not remove or abridge the prosecutor's exclusive function without an express constitutional provision (Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987)), and Article V, Section 21 lets it regulate only the "respective duties" of district and county attorneys. The bill is therefore drafted as a duty on the prosecuting attorney: on a magistrate's finding of probable cause that a specified offense against a child occurred, the prosecuting attorney shall present the matter to a grand jury within sixty days or file written reasons with the district judge. It commands no prosecution and sets no dismissal penalty. A joint resolution authorizing a non-local prosecutor, described in Section 12.4, is insurance and not a requirement.

12.3.8 Ex Parte Orders

A Texas court that finds "from the information contained in an application for a protective order that there is a clear and present danger of family violence" may enter a temporary ex parte order "without further notice to the individual alleged to have committed family violence and without a hearing" (Tex. Fam. Code § 83.001(a)). The program keeps the order: in a Seattle cohort of 2,691 women, permanent orders were associated with about an 80 percent reduction

in police-reported physical violence in the following year (Holt et al., 2002, Grade B). The same study found no such association for temporary orders. No peer-reviewed study was found that measures how often ex parte orders are sought for advantage in custody litigation or how often they are dissolved for that reason at the full hearing.

The bill keeps the ex parte order and attaches three rules to it. Where a suit affecting the parent-child relationship is pending, the full adversary hearing must occur within a short fixed period and the order's effect on possession expires if it does not. Findings at the full hearing must be stated in writing. And the Office of Court Administration must report, for every county, ex parte grants, full-hearing outcomes, and whether a custody suit was pending, so that the question no study has answered can be answered with Texas data. Emergency safety orders sought in connection with an alleged crime remain available in the family court (Section 12.3.7).

Federal law favors the design. An ex parte order receives full faith and credit in other States only if the respondent is heard "within a reasonable time after the order is issued" (18 U.S.C. § 2265(b)), and the federal firearm disability attaches only to an order "issued after a hearing of which such person received actual notice" (18 U.S.C. § 922(g)(8)(A)). A prompt adversary hearing strengthens the order's force elsewhere and ensures that the gravest collateral consequence follows only an order entered after the respondent was heard. The bill answers the Senate charge's concern with "unpredictable timelines."

12.3.9 The Child Support Package

The bill carries the child support positions Chapter 7 set out, and it states plainly which conform to federal law and which do not. It provides that no man owes support for a child who is not his genetic child, established by genetic testing in every case and not waivable by agreement, with adoption carved out. That requires amending the provisions under which a valid acknowledgment "is the equivalent of an adjudication" (Tex. Fam. Code § 160.305(a)) and widening the narrow relief of Section 161.005. Pregnancy and birth costs become recoverable only after testing confirms parentage, against receipts. It ends retroactive support, which the Code now presumes reasonable for "the four years preceding the date the petition seeking support was filed" and allows beyond that period on proof that the obligor knew or should have known of his paternity and sought to avoid support (§ 154.131(c), (d)). It provides that a parent collects support only when the receiving household is below 200 percent of the federal poverty level, and that no parent pays an amount that would reduce his own income below 250 percent. It ends interest on support, resets nonconforming orders, terminates existing arrears, ends garnishment and involuntary collection, limits enforcement to an annual report to the consumer credit agencies, and forbids contempt or confinement for arrears. One element conflicts with federal text on its face: a signed acknowledgment of paternity must be treated as a legal finding of paternity and recognized as a basis for a support order without further proceedings (42 U.S.C. § 666(a)(5)(D)(ii); 45 C.F.R. § 302.70(a)(5)(vii)). The bill therefore moves the genetic test to before an acknowledgment is signed, which is the author's proposed route and has not been tested with the federal child support agency. Each position is labeled by the route it needs. Most can be proposed in a form that fits the federal text: the support formula that credits parenting

time, the self-support reserve, the end of retroactive support, parentage testing before an acknowledgment becomes final, and limits on confinement short of a ban. These need a federal waiver or a change by Congress: terminating existing arrears, ending garnishment and involuntary collection, forbidding confinement for arrears, a genetic-only rule of parentage, and the 200 and 250 percent thresholds (the receiving household's income, and the paying parent's income after support, measured as a percentage of the federal poverty level). Terminating existing arrears conflicts with 42 U.S.C. § 666(a)(9) and with Tex. Const. art. I, § 16 unless waived.

Federal law is not ambiguous, and the report does not pretend otherwise. A State's guidelines must base each order on the noncustodial parent's ability to pay, incorporate "a low-income adjustment, such as a self-support reserve or some other method determined by the State," and be applied as a rebuttable presumption (45 C.F.R. § 302.56(c)(1)(ii), (f)). The same rule requires the State, in each review, to consider "the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level" (§ 302.56(h)(1)). A self-support reserve that protects the paying parent to 250 percent of poverty is a design choice the regulation expressly leaves to the State. A rule that no recipient household above 200 percent receives any support is not a computation from the payor's ability to pay, and the federal child support office would have to accept it as a guideline before it could stand.

Other positions conflict outright with Part D. Federal law requires income withholding (42 U.S.C. § 666(a)(1)), periodic credit reporting after notice (§ 666(a)(7)), and license-suspension authority used "in appropriate cases" (§ 666(a)(16)), and it makes each installment a judgment by operation of law "not subject to retroactive modification" (§ 666(a)(9)). A State whose program fails to comply substantially, and does not correct, loses 1 to 2 percent of its TANF grant on a first finding, 2 to 3 percent on a second, and 3 to 5 percent on a third (42 U.S.C. § 609(a)(8)(B)). The TANF grant itself requires the governor's certification that "the State will operate a child support enforcement program under the State plan approved under part D" (42 U.S.C. § 602(a)(2)).

Three routes exist, and the bill names them. The first is to conform: the self-support reserve, a guideline that credits parenting time, and an equal-parenting presumption that reduces transfers through the guidelines themselves. The second is federal permission, which the author's position seeks: a demonstration waiver, whose project "must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program" (42 U.S.C. § 1315(b)(1)(A)), or an exemption from a required procedure on a showing with data that it "will not increase the effectiveness and efficiency" of the program (42 U.S.C. § 666(d)). The third is to decline the program and pay its price, which includes the TANF certification. Terminating existing arrears also meets the Texas Constitution's bar on any "retroactive law" (art. I, § 16), and the bill must be drafted with it in view. The package answers the Commission's duty to identify policies that "discourage Texans from marrying and raising children" (H.B. 3284, § 7(1)).

12.3.10 CPS Audit, Transition, and the Removal Standard

At the full adversary hearing after an emergency removal, a Texas court must return the child "unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution" that there was a danger to the child caused by the parent, that the urgent need for protection required immediate removal, and that reasonable efforts were made (Tex. Fam. Code § 262.201(g)). On this report's reading of the text, the phrase names the temperament of the person to be persuaded, not the quantity of proof that must persuade him; no case construing it was read for this report. Federal law already requires more for one class of Texas children: no foster care placement of an Indian child may be ordered without a determination "supported by clear and convincing evidence, including testimony of qualified expert witnesses," that continued custody is likely to result in serious emotional or physical damage (25 U.S.C. § 1912(e)), a requirement the Supreme Court sustained against challenges brought by Texas and others (Haaland v. Brackeen, 599 U.S. 255 (2023)).

The bill raises the standard at the full adversary hearing to clear and convincing evidence and requires the court to name the specific efforts it found reasonable. The higher standard trades off marginal children: some children a lower standard would have removed will remain at home, as the removal literature read for this report shows. Federal funding rules fix what the first order must find, not how much proof it requires: Title IV-E pays foster care maintenance only after a judicial determination that remaining home would be contrary to the child's welfare and that reasonable efforts were made (42 U.S.C. § 672(a)(2)(A)(ii)), stated case by case "in the first court ruling that sanctions (even temporarily) the removal" (45 C.F.R. § 1356.21(c), (d)). A Texas bill that adds a findings checklist to every removal order protects federal reimbursement rather than risking it, because the documentation rule is where States lose federal dollars.

The bill also provides for an independent, phased audit of the Department's child protective services division, followed by a transition plan fixed by statute. The audit reports aggregate counts, any referral uses existing law, and the statute, or the Sunset decision, names the successor system and the order of transfer region by region. The bill keeps recording, 21-year retention of children's recordings, and aggregate counts reported against outcomes, and it excludes from any governing board only a person with a financial stake in placements or fees. The reason for the audit is in the federal record: in its 2024 Child and Family Services Review, Texas was in substantial conformity with none of seven outcomes (Children's Bureau, Texas Final Report 2024). That result is also the national pattern (Abbott et al., 2025). It is consistent with a structural cause and does not isolate one. Phases are required because every federal finding must still be made on time while caseloads transfer. The vehicle is the Department's Sunset bill. It answers the Commission's duty to assess "state-funded programs in encouraging family formation and helping parents develop and apply successful parenting skills" (H.B. 3284, § 7(2)(B)).

12.3.11 Accountability Offenses and a Civil Cause of Action

The offense that most nearly reaches an official who knowingly destroys a parent-child

relationship is official oppression, which requires that the public servant "intentionally" deny or impede another in the exercise of a right "knowing his conduct is unlawful," and which is a Class A misdemeanor (Tex. Penal Code § 39.03(a)(2), (d)). The bill creates an offense for knowing or intentional interference with the parent-child relationship by a court actor or agency official, defined by conduct and not by rulings in a new chapter: knowingly making a false statement in an official record; concealing or destroying a record or a recording; acting outside jurisdiction; retaliating against a person for a report; knowingly obstructing court-ordered possession; and coercing or procuring a plea by misstating its family-court consequences. A good-faith ruling within jurisdiction is expressly not the offense. The offense reaches judges and appointees for that conduct, requires no prior finding by a court or the Commission, and has its state consequences confined to that chapter so that the new labels trigger no custody presumption elsewhere in Texas law. A state statute cannot waive federal law, and a felony conviction under the new offense would carry the federal firearm disability; the bill states that consequence rather than disclaiming it.

It also creates a Texas civil cause of action, careful about what Texas can change. The defenses to a Section 1983 claim "are defined by federal law" (Howlett v. Rose, 496 U.S. 356 (1990)), and federal judicial immunity "is not overcome by allegations of bad faith or malice" (Mireles v. Waco, 502 U.S. 9 (1991)). But "when state law creates a cause of action, the State is free to define the defenses to that claim, including the defense of immunity" (Ferri v. Ackerman, 444 U.S. 193 (1979)). The Supreme Court of Texas has said how such a statute must be written: "statutes purporting to abrogate common-law principles must do so either expressly or by necessary implication" (Taylor v. Tolbert, No. 20-0727 (Tex. May 6, 2022)). The bill therefore names the immunities that do not apply to the new claim. It narrows the statutory immunity of chapter 107 appointees, which now yields only to conscious indifference or reckless disregard to safety, bad faith or malice, or gross negligence or wilful wrongdoing (Tex. Fam. Code § 107.009(b)), and declares that statute their exclusive immunity, ending the uncertainty created by the absolute common-law immunity some courts of appeals have applied. It borrows the enhanced-damages and anti-harassment structure of the Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.50(b), (c)), and it confines liability to appointees and to administrative acts, under the culpable states of § 107.009(b). The bill proposes no liability for judicial rulings, and the separation-of-powers question for judges is flagged as unresolved, because no source read resolves whether a damages action against a judge for a judicial act would survive the separation of powers clause (Tex. Const. art. II, § 1).

12.3.12 Nondisclosure Agreements That Conceal Child Abuse

Texas already voids any provision of a nondisclosure, settlement, "or any other agreement" to the extent it "prohibits a person, including a party, from disclosing an act of sexual abuse or facts related to an act of sexual abuse to any other person," while allowing the amount and terms of a settlement to stay confidential (Tex. Civ. Prac. & Rem. Code § 129C.002, added by S.B. 835, 89th Leg., R.S. (2025)). The section reaches sexual abuse only, and it voids the clause without penalizing the person who demanded it.

The bill extends Section 129C.002 to physical abuse and neglect of a child and makes it a felony to knowingly offer or accept a benefit in exchange for silence about child abuse with intent to prevent a report to the Department or to law enforcement. It sits beside existing law: every person must report abuse "immediately," and the duty applies "without exception" even to an attorney (Tex. Fam. Code § 261.101(a), (c)); knowing failure to report becomes a state jail felony for a professional who intended to conceal the abuse (§ 261.109). Because the offense punishes conduct carried out in words, the governing First Amendment principle is that it "has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language" (Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949)).

12.3.13 A Judicial Education Standard

The Senate's second charge directs the committee to "[s]tudy attempts by public advocacy groups to improperly influence the judiciary with biased informational seminars" and to recommend how "to ensure Texas judges remain fair and impartial." Chapter 9 found that the Rules of Judicial Education require advance submission of course materials in two places only, the prosecutors' disclosure training and guardianship programs outside the listed sponsors. Government Code § 22.110 names the subjects of family-court training, including "issues of attachment and bonding between children and caregivers" (§ 22.110(d)(10)), and sets no evidence standard for how they are taught.

The bill applies one standard to every trainer. Every program that counts for judicial education credit on a family-law subject files its agenda, its presenters, the presenters' financial and organizational ties, and its written materials with the Court of Criminal Appeals before the program, and the filings are public; every mandated topic is taught from sources graded by a published standard. The rule reaches the author's own field, and the trainings his allies have given, exactly as it reaches anyone else's. Bias in a seminar is a property of its content and its evidence, not of its sponsor, and a rule aimed at a sponsor would answer the charge with the very fault the charge describes.

12.3.14 Data and Transparency

The Office of Court Administration must report, court by court, three measures: the clearance rate, the average time from filing to disposition, and the age of the pending caseload (Tex. Gov't Code § 72.083(b)). No public Texas dataset found for this report states conservatorship or possession outcomes by the sex of the parent, by agreed or contested order, or by court. The State measures how fast its family courts close cases. It does not measure what the cases did to the families in them.

The bill requires the Office of Court Administration to collect, for every final order in a suit affecting the parent-child relationship, the conservatorship designation, the possession schedule, whether the order was agreed or contested, which parent requested primary residence, any family-violence finding, and the sex of each parent, and to publish the aggregates by court each year. It requires the ex parte reporting described in Section 12.3.8, publication of

every payment to a court-appointed professional by court and case type, and publication of the federal Title IV-D and IV-E dollars received by each county and court program. It answers the Commission’s duty to “evaluate existing state laws, rules, and policies” (H.B. 3284, § 7(1)), which cannot be done for laws whose effects are never measured.

12.3.15 A Plea Is Not a Finding

The bill adds a section with that title. "(a) No plea of guilty or nolo contendere, deferred adjudication, plea agreement, stipulation, agreed order, or default, in any criminal or civil proceeding, is evidence of, or a basis for, any finding of abuse, neglect, endangerment, or unfitness in a suit affecting the parent-child relationship, or for any reduction of a parent's possession, access, or conservatorship. (b) A reduction on the ground of alleged criminal conduct may rest only on a jury's finding: a conviction by jury verdict, or a unanimous jury finding in the family case by clear and convincing evidence. (c) No term concerning a parent's possession, access, or conservatorship may be made a condition of, or bargained for in, a plea; any such term is void. (d) Before accepting a plea from a parent of a minor child, the court shall admonish the defendant in plain language and in writing that the plea cannot be used to reduce the defendant's time with the child, and defense counsel shall certify in writing that the defendant was so advised; a misstatement by counsel, prosecutor, or court of the family-court effect of a plea is a ground to withdraw the plea. (e) An order that reduced a parent's time on the basis of a plea is voidable on motion at any time. (f) A judge who pressures a plea by reference to its family-court consequences is subject to referral to the State Commission on Judicial Conduct. (g) Emergency safety orders remain available on a corroborated showing of imminent danger, for no more than fourteen days without a hearing with findings. (h) This section regulates the civil effect of pleas. It does not limit charging, bargaining, or the prosecutor's exclusive function."

The purpose of the section is to stop the use of a plea's civil effect as leverage. A parent who is told that a plea will cost time with the child, or that refusing it will, bargains under a pressure the criminal case did not create, and a parent who accepts a plea to end that pressure should not lose a child's company for it. Under the section only a jury may reduce a parent's time on the ground of alleged crime. The section leaves charging and bargaining to the prosecutor, which keeps it consistent with the exclusive function described in Section 12.3.7 and in Meshell.

12.4 Joint Resolutions and the Two-Thirds Rule

Several recommendations cannot be enacted by statute alone, and the Constitution sets a higher bar for them: “The proposal for submission must be approved by a vote of two-thirds of all the members elected to each House, entered by yeas and nays on the journals” (Tex. Const. art. XVII, § 1(a)). The denominator is the members elected, not the members present. With 31 senators and 150 representatives (art. III, § 2), a joint resolution needs 21 votes in the Senate and 100 in the House. The amendment then takes effect only “[i]f it appears from the returns that a majority of the votes cast have been cast in favor” at an election whose date “shall be specified by the Legislature” (art. XVII, § 1(a), (c)). The bar is high but reachable: the bill that

created the Commission passed the House 107 to 32 and the Senate 25 to 6, a margin above two-thirds in both chambers.

Four subjects need a joint resolution or should carry one as insurance. First, the duty to present, which the bill places by statute on the prosecuting attorney on a magistrate's finding of probable cause for a specified offense against a child (presentation to a grand jury within sixty days, or written reasons filed with the district judge), needs no amendment. A joint resolution authorizing a non-local prosecutor to present, and any stronger duty to prosecute, which would require an amendment to Article V, Section 21 under Meshell, is insurance and not a requirement. Second, the recommendation that only elected judges decide contested family matters, that gubernatorial appointment to judicial office end, and that the State Commission on Judicial Conduct move further toward elected and civilian membership with blind review, requires amendments to Article V, Sections 1-a, 11, and 28; the 2025 amendment that restructured the Commission (Tex. Const. art. V, § 1-a, as amended Nov. 4, 2025, effective January 1, 2026) shows the path and is the text the new amendment would build on. Third, removing confinement for unpaid support requires either a statute the courts accept or an amendment, because the Supreme Court of Texas holds that the duty to support a child "is not considered a 'debt' within Article I, section 18, but a legal duty" (Ex parte Hall, 854 S.W.2d 656, 658 (Tex. 1993), as quoted in later opinions) and because courts may treat contempt as an inherent power. Fourth, Article I, Section 37 states a fundamental right but names no standard of review, no standard of proof, and no remedy, and the Supreme Court has left "a more robust discussion of this new provision" for "another day" (In re K.N., No. 24-0881, slip op. at 17 to 18 (Tex. June 5, 2026)). The Legislature may give the section operational content by statute, and the bills above do so; an implementing amendment is a later option, not a first-session need.

The joint resolutions should be filed with the bills they enable, and each enabling bill should carry a contingent-effect clause so that it takes effect only if the amendment is adopted.

12.5 Federal and Interstate Constraints

Texas may change its own law. It may not keep federal money and disregard the conditions attached to it, and it may not change the rules by which other States recognize its orders. Seven regimes bear on the program, and the bills above were drafted against each.

The Title IV-D state plan and its link to TANF govern the support package (Section 12.3.9), and the demonstration-waiver authority is bounded by the clause that a Part D project "may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support" (42 U.S.C. § 1315(b)(1)(B)). A waiver request must therefore be framed around children's financial well-being, which the self-support reserve and a parenting-time credit can be and the termination of arrears cannot easily be. Title IV-E fixes what the first removal order must find, not how much proof it requires (Section 12.3.10), and it requires a permanency hearing within twelve months and a termination filing once a child has spent fifteen of the most recent twenty-two months in care, unless the child is with a relative at the State's option, the agency documents a compelling reason, or the State has not provided

the services its own case plan deemed necessary for safe return (42 U.S.C. § 675(5)(C), (E)). Federal law thus already treats the State's failure to deliver promised services as a reason not to seek termination. The Indian Child Welfare Act supplies the model for the removal standard and limits its reach, because its "child custody proceeding" excludes a custody award to one parent in a divorce (25 U.S.C. § 1903(1)); it is a model for dependency cases, not private custody.

Interstate jurisdiction is the fifth regime. Texas's version of the Uniform Child Custody Jurisdiction and Enforcement Act makes the child's home state the first and exclusive basis of jurisdiction (Tex. Fam. Code §§ 152.102(7), 152.201), and the Parental Kidnapping Prevention Act requires every State to "enforce according to its terms, and . . . not modify" a determination made consistently with those rules after notice and an opportunity to be heard (28 U.S.C. § 1738A(a), (c), (e)). Neither examines the substantive standard applied, so an equal-parenting presumption would be enforced elsewhere like any other Texas order, but only for children whose custody Texas may decide. Texas must decline jurisdiction obtained by "unjustifiable conduct" (Tex. Fam. Code § 152.208), which answers the fear of forum shopping, and keeps exclusive continuing jurisdiction while a significant connection remains (§ 152.202).

The sixth and seventh regimes govern protective orders. The Violence Against Women Act bars grantees from disclosing victims' personally identifying information without informed written consent unless compelled by statute or court order (34 U.S.C. § 12291(b)(2)), so the recording and data provisions must be drafted around that condition; the full-faith-and-credit and firearm rules are stated in Section 12.3.8. The Supreme Court upheld the firearm disability as applied to a person found to pose a credible threat, in a case arising from a Tarrant County order entered by consent (United States v. Rahimi, 602 U.S. 680 (2024)). Because an agreed order entered after notice may carry the disability, the program requires that a respondent be told on the record, before consenting, that the order's terms may carry it.

Over all seven sits one rule of structure. Congress may not "command the States' officers . . . to administer or enforce a federal regulatory program" (Printz v. United States, 521 U.S. 898, 935 (1997)), but Titles IV-D and IV-E are conditions on grants a State elects to accept, valid unless inducement passes the point at which "pressure turns into compulsion" (South Dakota v. Dole, 483 U.S. 203 (1987)). Texas may decline a program and its funds, or negotiate through waivers. It may not keep the money and ignore the conditions, and every bill that touches them says so.

12.6 What the Fiscal Notes Already Show

The Legislative Budget Board has already scored most of these subjects, and its findings run against the assumption that reform of family procedure is expensive. On equal parenting, the Board found no significant fiscal implication in its notes on five bills across five sessions: H.B. 2927 (80th Leg.), H.B. 1229 (82nd Leg.), H.B. 2363 (84th Leg.), H.B. 2157 (86th Leg.), and H.B. 803 (87th Leg.), concluding that the Office of Court Administration could absorb the costs. The conclusion is unsurprising: a presumption changes how a judge decides, not how many judges decide.

On judicial oversight, the 89th Legislature's principal judicial-conduct bill drew a last fiscal note,

dated May 29, 2025 for the bill as passed by the second house, estimating a General Revenue cost of $131,106,866 for the 2026 to 2027 biennium. Almost all of that figure was judicial pay: raising the district judge base salary from $140,000 to $175,000 required $42,719,515 in General Revenue each year, with a one-time cost to the Judicial Retirement System Plan Two of $48,535,373. The oversight provisions were modest by comparison. The State Commission on Judicial Conduct needed $3,204,773 in fiscal 2026, of which $2,500,000 was for reconfiguring or moving its office, and $656,488 in fiscal 2027; the Office of Court Administration needed $254,006 and $88,206 to build a system collecting judicial transparency information. No note was published for the conference version, so these figures describe the bill as it left the House. They establish that oversight itself is cheap, and that the large number was a separate choice about salaries.

On counsel and recording, the 89th Legislature's bills drew notes of no significant fiscal implication. S.B. 2501 (an indigent parent's choice of appointed attorney ad litem) and S.B. 1838 (appointment and compensation of attorneys ad litem in government-filed suits) were both scored that way, and both were vetoed on June 22, 2025. H.B. 4139 (restricting videography in proceedings involving child or adult victims) and S.B. 1538 (as substituted, a study of digital court reporting by the Office of Court Administration) were scored the same way and died in the second house.

Fiscal notes are estimates at the time of scoring, not appropriations or actual costs. Each bill in this program should be filed early enough to receive its own note, and the committees should weigh that note rather than cost estimates offered in testimony, because the Board's record on this subject has been one of small numbers.

12.7 What Earlier Sessions Show

The record of earlier sessions is instructive in both directions. The reformers' bills show what to avoid. H.B. 803 (87th Leg.), an equal-parenting bill, was heard on April 26, 2021 and left pending. H.B. 3379 (88th Leg.) would have given joint managing conservators an equal-parenting presumption only if they lived twenty miles or less apart, and would have designated one parent "conservator A" with the exclusive right to set the child's primary residence; it was referred to committee on March 15, 2023 and never moved. S.B. 1702 (88th Leg.) and S.B. 849 (89th Leg.) exempted children under three from the presumption and deferred to the existing under-three factors of Section 153.254(a); S.B. 849 was referred to the Senate Committee on State Affairs on February 13, 2025 and died there without a recorded hearing. No study tests a twenty-mile line. The Code's existing possession lines are drawn at fifty and one hundred miles (Tex. Fam. Code §§ 153.312, 153.313, 153.3171), a parent could defeat such a presumption by moving twenty-one miles, and the relocation literature associates moving with worse outcomes for children of divorce (Braver, Ellman, & Fabricius, 2003, Grade B), plausibly through lost contact with a parent, which a radius would reward rather than prevent. The under-three exemption restated existing law, and a conservator-A designation rebuilt under a new label the primary-parent structure the presumption was meant to replace. The lesson is that a presumption loaded with conditions no study supports gives its opponents their best arguments

and gives its supporters nothing they did not have.

The record of the organized opposition is the subject of Chapter 9 and is stated here only as it bears on strategy. The Texas Family Law Foundation, a section 501(c)(6) trade association whose registered lobbyists appear in the Texas Ethics Commission's 2025 and 2026 filings, was recorded against H.B. 922 (86th Leg.), which would have changed the insupportability ground, and against the 2019 equal-parenting bills H.B. 2157 and H.B. 3414; H.B. 922 failed to receive an affirmative vote in committee on May 2, 2019. It was recorded for every bill on which it registered at the House committee hearing of April 19, 2023; the committee analysis of one of them, the fee bill H.B. 1546 (88th Leg.), is cited here for what it records about the bill's origin, which should be read in the analysis itself, and this report draws no inference from it about the Foundation's influence. Its successor, H.B. 2524 (89th Leg.), became law in 2025 and lets a family lawyer enforce a fee order in the lawyer's own name. The Texas Council on Family Violence also opposed several of these bills, for reasons of its own. At the Senate committee's hearing on September 14, 2026, every witness, the Foundation included, was recorded as testifying on the charge rather than for or against a bill. No bill on either side, in any session read, came with outcome data for children.

The conclusion is strategic, not accusatory. The opposition's position has prevailed in committee without data, and the reformers' bills have failed there without data. Whoever brings Texas outcome data to the 90th Legislature will be the first.

12.8 Sequencing and the Data Step

The program should be built in the order that makes each step testable by the next. The data step comes first and runs throughout. Before the first substantive bill takes effect, the State should begin collecting the outcome data described in Section 12.3.14, so that a baseline exists against which the change can be measured. Public information requests sent for this study to the Department and to sheriffs' offices are a start on that baseline, and their returns should be published when they arrive. The data bill is cheap and threatens no one's practice. It should be filed on the first day of prefiling.

The structural bills come next, filed in November and December so that each receives a fiscal note and a committee hearing in the window Article III, Section 5 reserves for hearings: findings and recording, temporary orders, the equal-parenting presumption, the evaluation standard, the judicial education standard, the ex parte reforms, and the plea failsafe. Each carries a delayed effective date long enough for the Office of Court Administration, the courts, and the bar to prepare, and a transition clause applying the change only to suits filed after it. The associate-judge and elected-judge reforms carry a twenty-four-month phase-in and their joint resolutions. The child-protection recommendations go first to the Sunset Commission's public testimony in November and then into the Department's Sunset bill. The divorce-grounds bill, the child support package, and the accountability chapter are filed with them, each stating plainly the federal and constitutional constraints that bear on it.

Measurement closes the sequence. Every substantive bill should require the responsible agency

to report, at fixed intervals, the outcomes it was meant to change, defined in the statute rather than by the agency, with pre-specified measures and an independent evaluator where a randomized or staggered rollout is possible, as it is for the support-enforcement alternatives. Kentucky's 2018 presumption shows why measurement matters: no peer-reviewed or government evaluation of it was found, the figures that circulate about it are advocacy counts with no comparison group, and the one comparison of its divorce rate with its neighbors' found the trend unchanged. That gap says nothing against the presumption. The case for equal parenting rests on the meta-analyses of shared-parenting outcomes, which show an association of modest force and, in some studies, control for selection, and measurement is how Texas would add evidence of its own. A reform that is not measured cannot be defended when its opponents return.

12.9 What Follows

This chapter has set out a program that the Commission can recommend, the Senate committee can endorse, and the 90th Legislature can enact in its first session: fifteen bills amending named sections of the Code, up to four subjects for joint resolution, two of them offered as insurance, and a data step that lets the State see what it has done. Every element of the program has an objection, and some of the objections are serious. Chapter 13 takes up the strongest of them, states each in its strongest form with its source, concedes what is true in it, and answers the rest. # Chapter 13. The Strongest Objections

Chapter 12 turned the report's findings into a legislative program. A program of that size will be opposed, and it should be: by institutions whose practices the report criticizes, by researchers whose work it relies on, and by legislators who share its goals and doubt its means. This chapter states the strong versions of the objections and answers them on the record.

13.1 Method

The chapter applies the disconfirmation rule of Section 1.5.4 to the report itself, in four steps. It states each objection as its best proponent would state it, with the best source that proponent could cite. It states what the record concedes, because almost every serious objection contains something true, and a reader who finds the true part conceded can trust the rest of the answer. It answers what remains with evidence and statutory text, never with an account of anyone's motive; an objection is not weakened by the interest of the person who makes it, and the report has asked to be judged the same way. And it states what would change the recommendation: the finding or the Texas data that should lead the Legislature, and the author, to withdraw or narrow it.

The objections are grouped by the four claims of the thesis in Section 1.2 and by remedy, followed by the two addressed to the author rather than the argument, his commercial interest and his faith. Section 13.11 gathers every concession in one place.

13.2 The Science

13.2.1 Attachment measures should not inform custody decisions

The strongest form of this objection comes from the field's own leaders. The international consensus statement on attachment in court holds that assessments of caregiver behavior should take center stage, that attachment-quality assessments are most suitable for informing supportive interventions, and that using them to allocate custody time is ill-advised, because no one knows whether a child benefits from more time with the parent to whom the child is more securely attached, the validity of the measures during a custody dispute is unknown, and insecurity is a probabilistic risk factor rather than a pathology (Forslund et al., 2022).

The record concedes most of this. Section 6.1.4 states the departure, marks it as contested, and does not claim that the statement's reasons lack support. No study read shows that awarding more time to the more securely attached parent improves outcomes, and none validates scoring the Attachment Q-Sort from video. The measures predict at the level of groups, and the later transmission figures of .31 and .21 (Verhage et al., 2016) are smaller than the 1995 figures.

The answer begins with the statute. Texas already requires every custody evaluation to include an "assessment of the relationship between each child who is the subject of the suit and each party seeking possession of or access to the child" (Tex. Fam. Code § 107.109(c)(7)). Attachment is judged in Texas custody cases now, by whatever method the evaluator's license permits, and the practice record shows what fills that space: personality and psychopathology inventories, the MMPI-2 in 97.2 percent of evaluations (Ackerman & Brey Pritzl, 2011), none of them built, on a reading of what each measures, to assess the relationship between a parent and a child, and only a limited number of tests endorsed as meeting the Daubert standard (Bow et al., 2006). The consensus statement itself acknowledges that validated assessments by certified coders can improve prediction above chance and that many instruments in use have lower or unknown validity (Forslund et al., 2022, p. 15). The comparison is between measures validated as measures of attachment, scored blind, and unstandardized impressions, not between those measures and certainty. They are not validated as a basis for dividing time, and the protocol therefore produces an input to the court's findings and a descriptive report, never a recommendation on custody. The protocol also confines the use the statement fears most: under the equal-parenting presumption, the measures do not rank parents for a larger share of time; they inform the court about each parent's caregiving beside direct assessment of it. And the statement records dissensus among its own authors on this use, which is a reason for the protocol's safeguards, not for leaving a mandatory assessment to unvalidated methods.

The protocol's use of these measures should be withdrawn if a study in custody samples shows that they add nothing to the prediction of children's outcomes beyond a structured assessment of caregiving, or that their use in litigation harms the children assessed. The consensus statement lists that question as open (§ 6.2). The protocol's other safeguards would stand without them.

13.2.2 Overnights harm infants and toddlers

The objection cites three studies. Solomon and George (1999) found infants with regular overnights less secure and more disorganized with the mother than infants in married families. McIntosh, Smyth and Kelaher (2013) associated more shared overnights at ages birth to three with less settled behavior toward the primary parent. Tornello and colleagues (2013) found 43 percent of infants with weekly overnights classified insecure at three, against 25 percent with daytime contact only.

The report accepts that these findings have not been refuted by stronger designs, that the evidence does not support equal nights in two homes from birth (Section 2.10.2), and that Pruett, McIntosh and Kelly (2014) find the studies substantiate caution about high-frequency overnights in the first three years where the child's security with a parent has not formed or the parents cannot agree.

The studies nonetheless carry their own limits. In Solomon and George, the comparison that matters for a custody rule, overnights against no overnights among separated families, did not reach significance. The Australian measures were parent reports in small cells, 63 infants and 26 children aged two to three in shared care (McIntosh et al., 2010). The Tornello measure was a Q-sort completed by the mother, the self-report version the meta-analysis found not valid (van IJzendoorn et al., 2004). Fabricius and Suh (2016) found overnights at age two associated with better young-adult relationships with both parents, in a retrospective design its authors decline to read causally. Pruett, McIntosh and Kelly state that cautions against any overnights in the first three years have not been supported.

The provision sits between the camps and says so. It is more cautious than Warshak (2014), who found no justification for postponing regular overnights: for a child under twelve months the court orders a stepped schedule of increasing frequency and duration of possession by each fit parent, moving toward equal time by the child's second year, adjusted only on findings specific to the child. The schedule is the same whichever parent has been the primary caregiver, because a rule that names a primary parent by statute would create the very division the report criticizes in the Code (Section 12.3.2). Like Emery (2021), who recommends building a second attachment through the first year and moving toward more equal time as infants become toddlers, it graduates the schedule, and it matches the gradual adjustment the consensus statement recommends where the second caregiver had been markedly uninvolved. The evidence supports neither a categorical bar nor indifference to age (Section 12.3.2).

The infant provision should change if a study of stronger design, using observer-scored measures rather than parent-completed forms, shows that regular overnights during the first year cause insecurity once caregiving and conflict are accounted for. The steps toward equal time should then be slowed and the date of equal time moved later.

13.2.3 Father-absence effects shrink in rigorous designs

The objection holds that the thesis borrows force from a literature that shrinks under careful design. Rigorous designs report smaller effects than cross-sectional studies, and selection

explains part of the gap (McLanahan, Tach & Schneider, 2013). Comparing siblings, Markowitz and Ryan (2016) found no association between early departure and adolescent delinquency.

All of this is conceded; the report uses the smaller estimates, and rejects the circulating multipliers (Section 2.8). But the thesis does not rest on father absence. Its causal foundation is the randomized evidence that changing a child's caregiving changes the child's attachment and mental health (Zeanah et al., 2009; Bernard et al., 2012; Cicchetti, Rogosch & Toth, 2006). What survives in the father-absence literature supports the thesis at its stated size: effects that persist in designs built to remove selection, strongest for externalizing behavior, high school graduation, and adult mental health, and a within-family effect of departure between ages 6 and 14 on delinquency of about d = 0.20.

The supporting role this literature plays would end on rigorous evidence that losing a resident parent has no effect once selection is removed. The randomized trials' samples were institutionalized or at high risk, a real limit the report states in Section 2.5, and the extension to custody is labeled an inference.

13.2.4 Findings from other places may not describe Texas

The objection is short: the developmental studies come from other States and countries, the only random-assignment study of custody allocation is Swedish, and a Texas statute should rest on Texas evidence.

The Texas data gap is conceded in full. No public Texas dataset records conservatorship or possession outcomes by parent, by agreed or contested order, or by court (Section 11.4.2). The objection is nonetheless an empirical claim, and the burden falls on the person who makes it. To say that Texas children respond differently to the loss of a caregiver than children elsewhere is to assert a fact for which no source read offers evidence; no study read reports that the relation between caregiving and children's outcomes differs by place. The rest of the argument rests on Texas's own documents: the Code, the State's court and agency data, the federal review, and the budget. The response to a gap in Texas data is to close it, which is why the data bill comes first in Section 12.8.

The objection would succeed on Texas outcome data, collected as Section 11.4.3 proposes, showing that Texas children in shared arrangements fare worse than comparable children in sole arrangements.

13.3 The Law

13.3.1 Texas courts already give fit parents their due

The objection is doctrinal. Texas presumes that parents should be joint managing conservators (Tex. Fam. Code § 153.131(b)). The Supreme Court of Texas requires the fit-parent presumption whenever a nonparent seeks conservatorship over a fit parent's objection (In re C.J.C., 603 S.W.3d 804 (Tex. 2020)), and has granted mandamus against temporary orders that divested a fit parent, calling the divestiture "irremediable" (In re Derzapf, 219 S.W.3d 327, 335 (Tex. 2007)

(per curiam)). In 2025 the Legislature wrote a clear-and-convincing standard into § 153.002 for suits by nonparents.

Each point is true; temporary orders are reviewable, and the remedy has been granted. But every protection named runs against a nonparent or an order already entered. Between two fit parents the Code supplies no presumption of time, allocates possession by a preponderance (§ 105.005), presumes a schedule it calls a "reasonable minimum" (§ 153.252) under which, in the model year, the possessory parent has the child about 139 nights, a little under two in five, applies that presumption to temporary orders (§ 105.001(g)), and gives reasons for departing from it only on request (§ 153.258(a)). Mandamus requires an authenticated transcript that an associate-judge hearing may never have produced (Tex. R. App. P. 52.7(a); Tex. Fam. Code § 201.009). The 2025 amendment is evidence for the report: the Legislature has judged a fit parent's relationship weighty enough that a nonparent must prove harm by clear and convincing evidence, with written facts. The child loses the same parent whether the petition comes from a grandparent or the other parent.

The proposal would lose its point on evidence that contested allocations between fit parents in Texas are made on records and stated reasons adequate for review. The State does not collect that evidence.

13.3.2 The standard of review under Article I, Section 37 is undecided

A careful opponent will say that the report builds on a sentence no court has construed. The Supreme Court of Texas left "a more robust discussion of this new provision of our Constitution for another day" (In re K.N., No. 24-0881, slip op. at 17 to 18 (Tex. June 5, 2026)); the "strictly scrutinize" language of In re H.S. comes from Holick v. Smith and concerns termination; Santosky is a termination case, and Rivera v. Minnich upheld a preponderance standard for paternity.

Every word is conceded, and the Limits of This Report present the procedural proposals as policy. The Legislature, however, needs no court's permission to protect a fundamental right above the floor. Santosky set clear and convincing evidence as the minimum, "at least" (455 U.S. 745, 768 (1982)). Federal law directs that a State standard more protective of parents than the Indian Child Welfare Act governs (25 U.S.C. § 1921). The Legislature did exactly this in 2025, writing a clear-and-convincing standard and specific findings into § 153.002(c) without a court's command. Texas already places the same burden on a nonparent who would interfere with a fit parent (§ 153.002(c)), and the Constitution now names the parental right fundamental (Tex. Const. art. I, § 37). If a crime or harm is serious enough to interfere with a fit parent, the State proves it.

No ruling on this question would defeat the proposals. A decision that Section 37 requires less would not bar the Legislature from providing more; a decision that it requires more would enlarge the case.

13.3.3 The Legislature cannot dictate court procedure

The objection draws on Article II, Section 1. The Supreme Court holds the rulemaking power in civil procedure; Webster v. Commission for Lawyer Discipline, No. 23-0694 (Tex. Dec. 31, 2024), places the regulation of law practice in the judiciary's inherent power; and courts may treat contempt as inherent. Findings, recording, referral limits, and contempt limits are, on this view, for the courts.

The record concedes two parts. Whether a statute alone can bind the inherent contempt power is unresolved in any source read (Section 7.9.7), so Chapter 12 carries a joint resolution on Article I, Section 18. And because Webster places lawyers' duties in the judiciary's field, Section 10.9 seeks the lawyer's reporting duty by a request to the Supreme Court for amendments to Rule 8.03 and Canon 3D.

For the rest, the statute answers. The Supreme Court's rules "may not abridge, enlarge, or modify the substantive rights of a litigant," and they "remain in effect unless and until disapproved by the legislature" (Tex. Gov't Code § 22.004(a), (b)). The Legislature has exercised that authority throughout the Family Code: a record in contested hearings (§ 105.003(c)), findings before limiting a conservator's rights (§ 153.072), specific findings for nonparent relief (§ 153.002(c)), written findings at removal (§ 262.201(g-2)), a disposition clock for Title IV-D cases (§ 201.110), and the questions a jury may decide (§ 105.002(c)). The proposals add provisions of the same kind.

The objection would prevail on a holding that requirements of the kind the Code already contains intrude on the judicial power. None was found.

13.3.4 The prosecutor cannot be commanded

This objection is correct, and the proposals were built around it. The Legislature may not remove or abridge the prosecutor's exclusive function without an express constitutional provision (Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987)), and exceptions to the separation of powers must be expressly permitted (State v. Stephens (Tex. Crim. App. Dec. 15, 2021)).

The proposals command no prosecution. A referral from a custody case delivers the allegation and leaves the charging decision with the prosecutor (Section 3.11); the judicial duty to refer a finding of knowingly false testimony decides nothing (Section 10.9). The report takes one position on presentation: a statute that places a duty on the prosecuting attorney, on a magistrate's finding of probable cause for a specified offense against a child, to present the matter to a grand jury within 60 days or file written reasons with the district judge. It commands no prosecution and sets no dismissal penalty; indictment is left to the grand jury and trial to the prosecutor, and the report states that the duty's survival under Meshell is undecided (Section 10.8). A joint resolution amending Article V, Section 21 to authorize a prosecutor other than the local one is insurance, not a requirement; it needs 21 Senate and 100 House votes (Tex. Const. art. XVII, § 1(a)), and the bill that created the Commission passed both chambers by more than two-thirds. The plea provision of Section 13.8.5 regulates the civil effect of pleas and leaves

charging and bargaining to the prosecutor.

One ruling would change the design: a holding that a duty of presentation abridges the prosecutor's function, after which the joint resolution should be carried in its place.

13.3.5 The associate-judge system is lawful and necessary

The objection holds that associate judges exist because elected courts cannot carry the family docket, that the Supreme Court upheld a Title IV-D associate judge's authority to modify conservatorship when the modification relates to support (Office of the Att'y Gen. v. C.W.H., 531 S.W.3d 178 (Tex. 2017)), and that reserving contested custody to elected judges would slow every case and break federal timeframes.

The report accepts that C.W.H. forecloses any claim that the office is unconstitutional, and that the cost of moving contested conservatorship to elected judges has not been measured. Every feature the report criticizes is statutory: the three-working-day window for a de novo request (Tex. Fam. Code § 201.015(a)), review limited to the issues named (§ 201.015(b)), automatic referral by general order (§ 201.101(d)), and a proposed order that becomes the referring court's order "by operation of law without ratification" (§ 201.1041(a)). C.W.H. assumed that "the Legislature believed that the efficiencies … outweigh any burden" (slip op. at 7 to 8), a legislative judgment the Legislature may revisit. The proposal keeps associate judges where every parent consents, carries a twenty-four-month phase-in, and keeps the federal expedited-process timeframes (45 C.F.R. § 303.101). The federal text read states no requirement that the presiding officer be a non-judge.

The proposal should be revised on a fiscal note showing that the elected bench cannot absorb contested conservatorship within the federal timeframes even with the phase-in. The answer then would be more judges or a longer transition.

13.3.6 The Code is too large to rewrite, and Texas has already reformed

The first objection is that the Family Code's 81 chapters and more than 2,300 sections carry decades of case law and, in the Title IV-D and IV-E chapters, federal plan approvals. It is sound against a one-session replacement, which the report does not propose. The first bills amend named sections and keep their numbers; the Model Family Code is a later project that must preserve every federal and interstate obligation the present Code carries (Section 12.2).

The second objection is that Texas has already reformed, by the expanded possession schedule of 2021 and the 2021 redefinition of neglect, after which foster care entries fell from more than 18,000 in 2019 to about 8,500 in 2023. It is partly true. The expanded schedule raises the possessory parent's share in the model year from about 83 nights to about 139 (Section 3.5), and the presumption remains a minority schedule called a minimum. The federal review that credited the neglect definition with the fall in entries found Texas in substantial conformity with none of seven outcomes in 2024, as in 2016, with maltreatment in foster care at 18.42 victimizations per 100,000 days against 9.07 nationally; the same review found recurrence of maltreatment better than the national rate, 6.6 percent against 9.7 (Section 8.6.1). A smaller

system that performs no better on the federal measures is a smaller system.

Two findings would narrow the recommendations: evidence that the 2021 reforms improved the outcomes the federal review measures, which would argue for repair of the child protection division over transition, or Texas data showing the expanded schedule to be the ordinary result of contested cases, which would narrow the case for a new presumption but not for findings and records.

13.3.7 Reserving parental rights to elected judges politicizes the bench

The objection, in its strongest form, is that elected judges answer to voters and donors rather than to the law, and that the research proves it. Elected Pennsylvania trial judges sentenced more severely as reelection approached; the authors attribute between 1,818 and 2,705 years of added incarceration in 22,095 cases to the electoral cycle (Huber & Gordon, 2004). Washington sentences for serious crimes ran about 10 percent longer at the end of a judge's political cycle (Berdejó & Yuchtman, 2013). Kansas judges facing possible challengers sentenced more harshly than judges in retention districts, and the authors attribute the difference to incentives rather than to the selection of harsher judges (Gordon & Huber, 2007). On state supreme courts, pressure to affirm death sentences was strongest under nonpartisan elections once interest groups began to target justices (Canes-Wrone, Clark & Kelly, 2014), and votes tracked voter partisanship and contributions from interested groups (Shepherd, 2009). On this view, sending custody to elected judges hands the most private decisions a court makes to the most political judges it has.

The record concedes the finding. When a judge's decisions are visible and salient to voters, the decisions move toward what voters reward; the designs are strong and the result is consistent. It also concedes the limit the objection omits: every one of these studies concerns criminal sentencing, capital appeals, or state supreme courts, and the leading review reports no study of custody, possession, protective orders, or child-welfare cases (Kritzer, 2016). Where elections are not competitive, the sentencing cycle disappears (Dippel & Poyker, 2019).

The answer begins with the Constitution. Texas did not ask whether its trial judges should answer to voters; it decided that they do. "Each district judge shall be elected by the qualified voters at a General Election" (Tex. Const. art. V, § 7(b)). The recommendation creates no new elections. It keeps the decision over a fit parent's fundamental right with the officer the Constitution already makes answerable, and removes it from officers whom no voter chose. A Title IV-D associate judge is appointed by the presiding judge of the administrative judicial region, serves a four-year term that "does not affect the at-will employment status of the associate judge," and may be removed because "[t]he presiding judge may terminate an appointment at any time" (Tex. Fam. Code § 201.101(b)). The parent before that judge has no vote, no recall, and, outside a written request filed within three working days, no route to the elected judge at all (Chapter 4). The objection therefore compares the wrong alternatives. The choice in the Code is not between a judge insulated from pressure and a judge exposed to it; it is between a judge who answers to the public and a judge who answers to the official who can end the appointment tomorrow.

The distortions the research documents arise when the public sees only one kind of decision, the lenient sentence that becomes a campaign advertisement. The remedy the report proposes for that danger is the remedy for every other failure it identifies: a recorded hearing, written findings in every ruling on conservatorship and possession, and published outcome data by court (Chapters 4 and 11). Voters who can see the whole record reward judges for the whole record. A bench that is answerable and observed is the design; a bench that is answerable and blind is what the sentencing studies describe, and a bench that is neither is what the associate-judge system is.

What would change the recommendation is evidence that children and fit parents fare worse, on measured outcomes, before elected district judges than before appointed associate judges in comparable cases. No such study exists in either direction. The report's data step (Chapter 12) would make it possible.

13.4 No-Fault Repeal

13.4.1 Unilateral divorce saved lives

This is the strongest empirical objection in the report, and Section 3.11 met it before stating the recommendation. Stevenson and Wolfers (2006), found that after unilateral divorce reform female suicide fell by 8 to 10 percent on average over twenty years and by 16 to 19 percent in the long run, with no effect on male suicide; that spousal violence fell in both directions, from baselines of 11.7 percent for husband-to-wife and 11.9 percent for wife-to-husband violence; and that women murdered by intimate partners fell by about 10 percent.

The record acknowledges more than an advocate would need to. The suicide result is the strongest of the three, and the report does not dispute it. The authors name two channels: exit, by which a spouse can leave a harmful marriage, and bargaining, by which the ability to leave changes conduct inside marriages that never end. The proposal keeps part of the first, the part available to a spouse who can prove harm, and none of the second, because bargaining power under unilateral divorce comes from the ability to leave without proving anything. Some spouses who would leave under current law would stay. Fault trials are adversarial, air allegations in open court, cost money and time, and expose children to the proof; no study read measures those costs, and the author accepts them.

The answer is a weighing, stated as a judgment. The violence and homicide results rest on two cross-sections of intact marriages, and the authors describe the homicide timing as weak. The study measures adults and reports no outcome for children. The children's side comes from the same design: adults exposed as children to unilateral divorce regimes were less educated, had lower family incomes, married earlier but separated more often, and had higher odds of adult suicide (Gruber, 2004). A Legislature charged by H.B. 3284 to "reduce the incidence of divorce and family dissolution" (§ 7(3)(B)(ii)) may weigh the children's long-run outcomes heavily, provided it preserves the exit for spouses and children facing violence. Neither study tests repeal, and the report predicts nothing about what repeal would do to Texas divorce or marriage rates. The lead recommendation rests on the policy of H.B. 3284 and on children's

long-run outcomes, which the report grades B because Gruber's design, though a natural experiment, was read in part and the same method yields the contrary Stevenson and Wolfers (2006) results for adults. The report asks that the Legislature require a measured review after four years.

Two findings should move the Legislature away from repeal: a full reading or replication of Gruber showing that the child effects do not survive, or Texas data after enactment showing that the express violence ground fails in practice to give victims an exit.

13.4.2 Ending no-fault traps victims

The strongest version is about proof. A victim may lack the evidence a fault trial demands, may fear the trial, and may need to leave before a case can be built; insupportability lets her leave on her own word.

The report acknowledges that repeal requires a showing that insupportability does not, that the bargaining channel is lost, and that the forfeiture rule in the fallback design (fallback only, if repeal fails) has not been analyzed for its constitutionality in any source read (Section 3.11).

The proposal was built for this case. Cruelty remains a ground: "The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable" (Tex. Fam. Code § 6.002). The bill adds an express ground for family violence and child abuse, with mandatory referral of the allegation to the prosecuting attorney, so that the abuse is tested where proof beyond a reasonable doubt applies and the victim is not required to remain married while the criminal case proceeds. Protective orders and emergency removal are untouched, the family-violence exception to the waiting period stays (§ 6.702(c)), and the fee waiver Boddie v. Connecticut, 401 U.S. 371 (1971), requires remains. Neither the cruelty ground nor the express ground waits on a criminal conviction. Spouses who both want the marriage ended proceed on the surviving grounds by agreed judgment; the bill creates no ground that requires no reason.

The express ground would be shown inadequate by Texas data showing that victims of family violence are denied divorce, or delayed in leaving, at rates the present system does not produce. The data step should count divorces by ground and time to judgment.

13.4.3 Children are better off when a high-conflict marriage ends

The objection draws on the most careful longitudinal study of the question. Amato and Booth followed a national sample of married parents and their children into adulthood and found that children from high-conflict marriages did better when the marriage ended (Amato & Booth, 1997). On this view, any rule that makes divorce harder keeps some children in homes that harm them.

The record accepts the finding as stated. Children are not served by a home of sustained high conflict, and the report proposes nothing that would hold a child there.

The answer is that the same study is among the strongest evidence for the report's

recommendation. Amato and Booth found the opposite result for the other kind of divorce: children whose parents' low-conflict marriages ended in divorce fared worse on the measures the study followed (Amato & Booth, 1997). The policy question the study raises concerns the divorces that do not end high-conflict marriages. That is the category the repeal of unilateral no-fault divorce addresses. A marriage marked by cruelty may still be dissolved on that ground (Tex. Fam. Code § 6.002), and the report adds an express ground for family violence or abuse of a child with a mandatory criminal referral (Section 13.4.2; Chapter 12). What the repeal ends is the unilateral dissolution, over a spouse's objection, of a marriage that has no fault ground at all, which in the authors' data is the divorce that harms children most. The objection and the recommendation rest on the same evidence; they differ only in which half of it they report.

What would change the recommendation is evidence that the dissolution of low-conflict marriages does not harm children, or that the harm Amato and Booth found has disappeared in later cohorts. The report found neither.

13.5 Equal Possession

13.5.1 An equal-time presumption empowers abusers

The objection holds that a presumption of equal time gives an abusive parent a statutory claim to half the child's life, that abuse is often hidden, and that a victim who cannot prove it will be ordered to share the child with the abuser.

The record concedes that a starting rule can place a child with an abusive parent when the abuse goes unproved, and that no rule of proof sorts every case correctly. It concedes that no peer-reviewed or government evaluation of the Kentucky law was found (Section 3.9).

The answer has four parts. First, the presumption governs fit parents, a fit parent being one who has not been found, on written findings, to endanger the child's physical or emotional welfare and who is willing and able to exercise possession, and the bill leaves § 153.004 untouched, so that its family-violence findings displace the presumption; that section bars joint managing conservatorship on credible evidence of a history or pattern of neglect or physical or sexual abuse, and bars access by a parent shown by a preponderance to have a recent history or pattern of family violence unless the court makes protective findings (§ 153.004(b), (d), (d-1)). Every enacting State paired its presumption with a violence rule, and Kentucky added a reverse presumption in 2026 where a party has committed two or more acts of domestic violence and abuse. Second, emergency safety orders remain available first, on a corroborated showing of imminent danger and for no more than fourteen days without a hearing with findings, followed by a final hearing, so that no child waits for a verdict to be safe, a final hearing must follow, with the time-back rule applying when it ends without a jury finding, and an allegation not yet proved is referred for investigation on a fast track and tested on a record (Sections 6.2.4 and 12.3.7). Third, the best evidence on shared-parenting law runs against the prediction: after the American joint custody laws, reported husband-on-wife violence fell by about 2.7 percentage points from a base of 11.7 percent (Halla, 2015), and the Swedish random-judge study detected no increase in either parent being recorded as a suspect in partner violence, an estimate its

authors call imprecise (Canessa et al., 2026). Neither shows that shared parenting reduces violence in any family; both cut against the claim that a presumption must increase it. Fourth, the statutes apply to both parents, because physical aggression is reported in similar proportions by men and women while injury and fear fall more heavily on women (Archer, 2000). The objection that the report ignores real victims is answered by the time-back rule: a real, substantiated finding keeps every protection, and only an allegation that is not found by a jury, on a final hearing, or that is dismissed, withdrawn, or otherwise unsubstantiated triggers make-up possession of twice the time lost, so that the false accusation costs the accuser the advantage it was meant to buy.

A fifth answer meets the objection that the report ignores real victims. Real, substantiated findings keep all protections: a family-violence finding under § 153.004 displaces the presumption, and an emergency order issues on a corroborated showing of imminent danger. Only unfounded allegations trigger the time-back rule, under which an allegation not found by a jury, on a final hearing, or that is dismissed, withdrawn, or otherwise unsubstantiated entitles the accused parent to make-up possession equal to twice the time lost, so that a false allegation costs the accuser the advantage it was meant to buy.

The presumption should be tightened, on the Kentucky model, if Texas data after enactment show an increase in family-violence findings, protective-order violations, or maltreatment among families under it, against a baseline collected before it takes effect.

13.5.2 Shared parenting harms children of parents in conflict

The objection holds that shared time exposes children of warring parents to constant conflict and that the advantage of shared custody vanishes where conflict is high. In 1,087 German post-separation families, the advantage held where conflict was low and mental health in the two arrangements was quite similar where conflict was above average (Augustijn, 2021); in Australian national data, differences at ages four and five disappeared once warmth, conflict, and income were accounted for (McIntosh et al., 2010). The Texas Conservative Coalition Research Institute staff paper adds that conflict and parenting quality, not family structure or parenting-time presumptions, predict adjustment.

The advantage does narrow with conflict, and selection is real: in a representative German sample, shared custody showed no link to adjustment once parental differences were accounted for (Langmeyer et al., 2022).

Yet neither conflict study shows shared care harming children of parents in conflict; both show the advantage narrowing and conflict carrying the weight. That argues for procedures that lower conflict, and the present procedure is a contest in which each parent must diminish the other to win a schedule the Code presumes for one of them (Section 2.9.3). On the staff paper's point the report agrees: it argues for the quality and continuity of each parent's caregiving, and a parent cannot parent well or badly in time he does not have. The one study that isolates custody allocation estimated that joint custody in disputed, marginal cases raised children's test scores by 0.47 standard deviations with no detected increase in psychiatric medication use

(Canessa et al., 2026), within the limits of a working paper, not yet peer reviewed, confined to marginal cases and chiefly joint legal custody.

A different rebuttal rule would be required by evidence from a study that isolates the arrangement showing that shared time harms children of parents in high conflict. Sustained high conflict, proved on evidence, should then be a ground for departure.

13.5.3 A starting rule narrows the judge's attention to the individual child

The objection comes from the bench and deserves respect. The best-interest standard exists so that a judge looks at the child before the court; a presumption rebuttable only by clear and convincing evidence tells the judge where to end before the hearing begins. The point is conceded: a presumption does narrow attention, and Section 1.4 accepted that no formula fits every family.

Texas, however, already has a starting rule. The Code presumes that the standard possession order is in the child's best interest (§ 153.252), applies it to temporary orders (§ 105.001(g)), and asks for reasons only when a court departs from it and a party requests them (§ 153.258(a)). The choice is not between discretion and a presumption. It is between a presumption that gives one fit parent about two in five of the nights (139 in the model year) and requires no reasons for imposing it, and one that begins from equal time and requires findings for departing from it. A presumption decides the close cases, which is where the Swedish estimate applies. And the discretion the objection defends turns, in the gravest cases, on allegations the family court has no method validated for its use that it routinely requires to test (Section 6.2.4). The bill's rule yields on clear and convincing evidence, on a jury's finding of conduct endangering the child (a conviction by jury verdict or a unanimous family-case jury finding by clear and convincing evidence), on corroborated imminent danger, and under the protective statutes it leaves unchanged. The standard is the one Texas already applies to nonparents (§ 153.002(c)); Santosky sets clear and convincing evidence as the constitutional minimum before the State severs the parent-child relationship; and if a crime or harm is serious enough to interfere with a fit parent, the State proves it.

The presumption would become unnecessary on findings data showing that courts, freed of the present presumption, already reach equal or near-equal schedules for fit parents in most contested cases. The findings requirement alone would then carry the reform.

13.6 The Money

13.6.1 There is no evidence that Title IV-D financing distorts custody

This objection is conceded first. No published study read shows that the federal incentives, the Title IV-D bench, or the fee provisions change who receives conservatorship or how much time a child spends with each parent, and the report attributes no motive to any judge, agency, or employee (Sections 1.3.3, 4.6, 5.11). A related claim, that federal money drives Texas removals, the report rejects on the State's own figures: the Department's federal share fell from 52 to 35

percent in twelve years, and only 27.9 percent of Texas children in placement were Title IV-E participants in fiscal year 2023 (Section 5.5).

What remains is structure and a request. The federal measures count orders, collections, and placements; they do not count whether a child kept a relationship with a fit parent. The structure is written: five federal measures, none concerning a child's relationship with either parent (45 C.F.R. § 305.2); a directive that the regional presiding judges and the Title IV-D agency "take any action necessary to maximize the amount of federal funds available under the Title IV-D program" (Tex. Fam. Code § 201.107(c)); and 43 child support courts funded $15.3 million of $23.5 million by Title IV-D pass-through money (Legislative Budget Board, Financing the Judiciary in Texas, p. 20). The analogue is tested: in foster care, payment levels change the supply of care (Doyle & Peters, 2007; Bald et al., 2022). The effect on custody has never been measured, and the absence of evidence is a reason to collect it, which Section 5.12 asks the State to do.

The decisive evidence is the measurement itself. If it shows no difference in custody outcomes between Title IV-D courts and other courts once case characteristics are accounted for, the proposal to separate contested conservatorship from Title IV-D proceedings loses its structural rationale.

13.6.2 Federal law and the TANF grant forbid the support positions

The objection holds that the child support positions would cost Texas its federal program. The State plan must provide income withholding (42 U.S.C. § 666(a)(1), (a)(8)); each installment is a judgment "not subject to retroactive modification" (§ 666(a)(9)); and the TANF grant requires the governor's certification that the State operates an approved child support program (42 U.S.C. § 602(a)(2)).

The record concedes that several positions conflict with federal conditions, and Chapter 7 names each conflict and its price. Termination of existing arrears and the end of all withholding need a federal waiver under 42 U.S.C. § 1315 or an act of Congress; they are requests for a waiver, and the bills that fit the federal text are the others. Termination of private arrears conflicts with § 666(a)(9) and faces the Texas bar on retroactive laws (Tex. Const. art. I, § 16). Ending all withholding conflicts with § 666(a)(1) and (a)(8). Partial noncompliance costs 1 to 2 percent of the TANF grant on a first finding and more on later ones (42 U.S.C. § 609(a)(8)); leaving the program risks the whole grant, together with $230,111,822 in federal reimbursement of administration in fiscal year 2024 (Section 7.9.8). A demonstration "may not permit modifications … which would have the effect of disadvantaging children in need of support" (42 U.S.C. § 1315(b)(1)(B)).

Most positions can nonetheless be proposed in a form that fits the federal text: support only from a genetic parent confirmed at the start, no retroactive support, birth costs on receipts, a self-support reserve the regulation leaves to the State (45 C.F.R. § 302.56(c)(1)(ii)), no interest, orders reset from a statutory petition, collection through the federal exceptions to immediate withholding, discretion for license suspension, and no confinement for inability to pay. The

objection is an argument for enacting those now and seeking federal change for the rest, including the exemption 42 U.S.C. § 666(d) allows on a showing with data that Texas has never collected.

The State's choice would sharpen on a federal determination that a compliant design, such as the self-support reserve at the level proposed or the formula of Section 7.9.4, fails plan approval. The report asks that the choice then be made on the numbers.

13.6.3 The program is efficient

The Office of the Attorney General reports that the program collected nearly $4.3 billion in federal fiscal year 2025 and avoided more than $1.5 billion in public assistance and Medicaid costs in fiscal year 2024. The report concedes both figures (Section 5.11) and adds that Texas distributes 64.1 percent of current support due against a median of 64.0 percent, on a load far larger per case than the median State carries (Section 5.4).

The program is efficient at what it measures, and its measures do not include the child's relationship with either parent. Efficiency at the wrong objective is not a defense of the objective. Chapter 7 adds that the harshest tools move little money: for Wisconsin fathers with income below 200 percent of the federal poverty level, payment did not differ by the size of the burden (Hodges, Meyer & Cancian, 2019), and license suspension has no measured benefit.

The case against the present tools would weaken on evidence that, applied to parents below a self-support reserve, they raise payments to children rather than arrears.

13.7 The State as Custodian

13.7.1 The removal research cuts both ways

The objection is the report's own evidence turned against it. In Michigan, marginal children placed in foster care were safer, attended school more, and were arrested and convicted less as young adults (Gross & Baron, 2022; Baron & Gross, 2025); in Rhode Island, removal raised young girls' test scores (Bald, Chyn, Hastings & Machelett, 2022). A higher standard might leave such children at home, to their harm.

The report concedes the research in full, including the opposite findings in Illinois (Doyle, 2007) and for older Swedish children placed largely in group care (Helénsdotter, in press), and draws no general conclusion about whether removal helps or harms (Section 8.5).

The recommendations do not rest on a claim that removal never helps. They concern who decides, on what proof, and with what record. The report accepts that a higher removal standard trades off marginal children, for whom some of this research finds removal helped, and it accepts that cost in exchange for removal only on proof suited to the right at stake. The authors explain the disagreement by the length and stability of placements, the age of the children, the setting of care, and what happened to the parents (Bald, Doyle, Gross & Jacob, 2022), variables the State's custodial performance controls and the transition plan's reporting duties target (Section 8.9.2). A clear-and-convincing standard concentrates removal on the cases

where the evidence of danger is strongest, the cases least likely to sit at the margin the studies measure, and it is the standard Texas courts already apply whenever the child is an Indian child (25 U.S.C. § 1912(e)).

The higher standard should be reconsidered on Texas evidence that children kept home under it suffer more maltreatment than comparable children removed under the present one. Recurrence within twelve months, which the federal review already measures, published by county, is the test.

13.7.2 Auditing and transitioning the CPS division leaves children unprotected

The proposal is an independent, phased audit of the division followed by a transition plan fixed by statute, and the transition is not designed in detail until the audit reports; every phase must keep every federal finding on time (Section 8.9.2). It reorders a structure, not a function. Law enforcement's authority to take a child in immediate danger remains (Tex. Fam. Code § 262.104(a)), as do protective orders and the criminal law, and the transition moves each region's caseload only on transfer. A federal review finding no outcome met in two consecutive rounds, and maltreatment in State care at about twice the national rate, is consistent with a structural cause and does not isolate one, but it does not support the assumption that disruption is the greater risk. Evidence after the Sunset review that the division meets the federal outcomes would argue for repair.

13.8 Accountability

13.8.1 Immunity protects judicial independence

The objection draws on settled doctrine. Judicial immunity "is not overcome by allegations of bad faith or malice" (Mireles v. Waco, 502 U.S. 9 (1991)), and Texas courts have extended derived immunity to court-appointed evaluators and guardians ad litem because "Fear of liability to one of the parents can warp judgment that is crucial to vigilant loyalty for what is best for the child" (Delcourt v. Silverman, 919 S.W.2d 777, 785 (Tex. App. Houston 14th Dist. 1996)).

The record concedes the federal floor: Texas cannot strip a judge of immunity in a § 1983 suit, because "the elements of, and the defenses to, a federal cause of action are defined by federal law" (Howlett v. Rose, 496 U.S. 356 (1990)). It concedes that whether a statutory damages action against a judge for a judicial act would offend the separation of powers is unresolved.

What remains is that the civil action reaches appointees and administrative functions only (Section 10.4) and proposes no liability for judicial rulings; whether a statute could reach a judge's own conduct under Article II, Section 1 is flagged as unresolved. The criminal offense is defined by conduct, not by rulings: a knowingly false statement in an official record, concealing or destroying a record or recording, acting outside jurisdiction, retaliating for a report, knowingly obstructing court-ordered possession, and coercing or procuring a plea by misstating its family-court consequences. It reaches judges and appointees for that conduct and expressly

excludes a good-faith ruling within jurisdiction (Section 10.4). The civil action reaches knowing or intentional conduct and the culpable states the Legislature itself named in § 107.009(b): conscious indifference to safety, bad faith or malice, gross negligence, and wilful wrongdoing. An official who acts in good faith, or errs, faces nothing new. Much of the present shield is the Legislature's own work: it grants associate judges "the judicial immunity of a district judge" by statute (Tex. Fam. Code § 201.017) and wrote the exceptions in § 107.009(b) that the common-law rule does not recognize.

Nothing in the proposals touches the federal question. On the state cause of action, a holding that Texas may not define the defenses to a Texas claim against appointees would end that proposal; Ferri v. Ackerman, 444 U.S. 193 (1979), states the contrary rule.

13.8.2 Liability will empty the pool of evaluators and ad litems

The objection is practical: appointees do hard work for modest fees, and exposure to suit by disappointed parents will drive the best away. A California committee analysis recorded the concern that removing immunity would "dissuade some court-appointed experts from participating" (Section 10.4). The report concedes that the size of the present pool is unknown, that no public count of reliability-certified coders exists, and that no evidence shows how liability affects supply in either direction (Sections 6.1.5 and 10.4).

The answer is the culpability threshold. Negligence alone would not suffice; exposure begins only where § 107.009(b) already says immunity should end. Fee shifting against groundless, bad-faith, or harassing suits on the model of Tex. Bus. & Com. Code § 17.50(c) answers the fear of routine suits, and a condition that appointees carry liability coverage places the risk where other licensed professionals carry it (Section 10.11). The Standard Protocol's twenty-four-month sunset gives time to qualify. The claim that liability would drive good appointees away is a prediction, and the appointment data of Chapter 11 would test it.

The coverage and fee terms, not immunity for bad faith, should be revisited on appointment data showing that qualified appointees fall after enactment to a level that delays cases.

13.8.3 Penalties for false reports will chill real reports

The objection holds that a parent who fears prosecution for an unproved report will stay silent, and that children harmed by the silence will outnumber those protected from false accusation. It is the strongest objection to the mirror penalty.

The record concedes that the effect of a heavier penalty on reporting has not been measured and that the case for it does not depend on any claimed rate. It concedes what the best data show: in Canada's national study, caseworkers judged 4 percent of investigations intentionally fabricated overall and 12 percent where a custody dispute was ongoing, and most unsubstantiated reports were made in good faith (Trocmé & Bala, 2005). An unsubstantiated report is not a false report.

The answer is in the elements. Texas already makes a knowingly false report with intent to deceive a state jail felony (Tex. Fam. Code § 261.107(a)); the proposal changes the grade, not

the line between good faith and knowing falsehood. It requires knowing falsity and intent to deceive, restates the good-faith immunity of § 261.106, requires a separate conviction of the accuser, and reserves charging to the prosecutor (Sections 6.2.4 and 10.6). Federal law draws the same line: immunity for good-faith reports, and disclosure of a reporter's identity where a court finds "reason to believe that the reporter knowingly made a false report" (42 U.S.C. § 5106a(b)(2)(B)(vii), (b)(3)). A person who reports in good faith is protected by the same good-faith immunity that exists now.

The penalty should be reconsidered on data showing a fall in substantiated reports after enactment with no corresponding fall in false ones. The allegation reporting recommended in Section 6.2.4 should be in place first.

13.8.4 Mandatory findings and recording cost too much

The objection holds that findings in every contested ruling would consume judicial time, that recording every hearing requires equipment and staff, and that counsel for parents in government suits adds a budget line. The record concedes that no source read measures these costs and that the report computes no fiscal notes (Sections 4.7 and 11.3.3).

The Legislative Budget Board's record here is one of small numbers. It found no significant fiscal implication in its notes on five equal-parenting bills across five sessions, on the 89th Legislature's bill to study digital court reporting, and on the two 89th Legislature bills on appointed counsel in government-filed suits, both vetoed on June 22, 2025 (Section 12.6). The Board's fiscal note on the 2025 judicial-conduct legislation priced a court-transparency data system at $254,006 and $88,206 over two years, for the bill as it left the House. Findings need not be essays; the Code already requires them when a conservator's rights are limited, support departs from the guidelines, a nonparent obtains relief, or the State removes a child. The cost of the present arrangement falls on the 85,539 petitioners who represented themselves in district court family cases in fiscal year 2025, for whom findings on request are findings forfeited.

The proposals should be resized on fiscal notes showing costs out of proportion to the interest at stake.

13.8.5 Limiting the civil use of pleas will weaken child-abuse prosecutions and force children to testify

The objection holds that a rule barring the use of a parent's plea in a custody case, and voiding custody terms in plea bargains, will make pleas less attractive, turn more child-abuse cases into trials, and put the child on the witness stand in front of the accused, the harm that plea agreements exist in part to spare. Prosecutors and child advocates can say, with reason, that the most protective outcome for many children is a conviction no child had to win.

The record concedes that a trial asks more of a child than a plea does, and that if pleas decline in some cases, trials will rise. The provision is drawn to meet the point without touching what prosecutors do. Its intent is narrow: only a jury may ever reduce a parent's time with a child. A plea is not a finding. Pleas are often coerced, frequently by the misadvice, from counsel or from

the bench, that a plea means nothing in the family case, when in the custody court it becomes the basis for stripping time. The plea failsafe therefore provides that no plea of guilty or nolo contendere, deferred adjudication, plea agreement, stipulation, agreed order, or default, in any criminal or civil proceeding, is evidence of or a basis for a finding of abuse, neglect, endangerment, or unfitness, or for any reduction of a parent's possession, access, or conservatorship; that a reduction on the ground of alleged criminal conduct may rest only on a jury's finding, whether a conviction by jury verdict or a unanimous jury finding in the family case by clear and convincing evidence; that no term concerning possession, access, or conservatorship may be made a condition of or bargained for in a plea, and any such term is void; that before accepting a plea from a parent of a minor child the court admonishes the defendant in plain language and in writing that the plea cannot be used to reduce the defendant's time with the child, defense counsel certifies the advice in writing, and a misstatement by counsel, prosecutor, or court of the family-court effect of a plea is a ground to withdraw it; that an order that reduced a parent's time on the basis of a plea is voidable on motion at any time; that a judge who pressures a plea by reference to its family-court consequences is subject to referral to the State Commission on Judicial Conduct; and that emergency safety orders remain available on a corroborated showing of imminent danger, for no more than fourteen days without a hearing with findings.

The provision regulates the civil effect of pleas. It does not limit charging, bargaining, or the prosecutor's exclusive function, and so stays within the principle of Section 13.3.4 (Meshell v. State): a prosecutor remains free to offer, and a defendant to accept, any plea on the criminal charge, and what the plea can no longer do is decide a custody case. The admonishment adds a warning to those the court already gives before accepting a plea (Tex. Code Crim. Proc. art. 26.13). The provision forbids no plea and forces no trial. If trials do rise, the answer to the concern about the child witness lies in law Texas has had for years. In a prosecution for listed offenses against a child younger than 13, a recorded statement taken before indictment is admissible if "the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases" (Tex. Code Crim. Proc. art. 38.071, § 2(a)). The court may order the child's testimony "taken in a room other than the courtroom and be televised by closed circuit equipment," and "shall attempt to ensure that the child cannot hear or see the defendant" (art. 38.071, § 3(a)); it may set any further conditions that protect the child, "taking into consideration the interests of the child, the rights of the defendant, and any other relevant factors" (§ 3(b)). A child's outcry statement is admissible under article 38.072. The Supreme Court of the United States has held that "[s]o long as a trial court makes such a case-specific finding of necessity, the Confrontation Clause does not prohibit a State from using a one-way closed circuit television procedure for the receipt of testimony by a child witness in a child abuse case." Maryland v. Craig, 497 U.S. 836, 860 (1990); see id. at 855 to 857 (the finding must rest on evidence that the child would be traumatized by the defendant's presence and that the distress is more than de minimis). The choice the objection presents, a plea or a child cross-examined face to face, is not the choice Texas law presents, and a plea that cannot be turned against a parent's time with the child is a

plea freely made.

What would change the position is evidence that children who testify under these protections suffer harm greater than the harm of a custody decision resting on an untested allegation or an unadjudicated plea. The report found no study that measures that comparison, and it does not claim one.

13.9 The Author's Interest

The objection is direct: the Standard Protocol would require instruments the author administers and codes commercially, and a recommendation that enlarges its author's market should be discounted.

The interest is real, and the report has disclosed it from the first page. Dr. McKenzie provides Adult Attachment Interview coding, Attachment Q-Sort administration, and Trust-Based Relational Intervention training commercially; he is not a licensed psychologist and provides no diagnosis or treatment; and the recommendations of Chapter 6 would, if enacted, create work for people with his training (Statement of Interest; Section 9.1).

The recommendation is drafted to be judged without regard to who proposes it. The statute states criteria, validated measures scored under the published manual by reliability-certified coders blind to the allegations, and names no product or provider. Appointees are assigned at random from a state-certified pool, with an annual cap per court and disclosure of every prior dealing with counsel; every session is recorded; any qualified reviewer chosen by any party may examine the full file and raw data. The statute bars any person who sells training, coding, scoring, or administration services for an approved instrument, or who holds a financial interest in one, from serving as an appointee, vendor, or pool administrator under it. The bar is a rule for everyone and applies to the author; any qualified reviewer may serve (Sections 6.1.5 and 12.3.6). The evidence standard of Chapter 9 reaches the trainings he and his allies have given exactly as it reaches anyone else's, including the requirement that any training state when its outcome data are uncontrolled (Section 9.10).

The test the report asks a reader to apply is whether the Standard Protocol would be sound if proposed by someone with no interest in it. If the evidence in Section 13.2.1 fails that test, the protocol should fall, and the author's commitment does not save it.

13.10 Faith in a Legislative Report

The objection holds that a report to a legislature should not argue from Scripture, that the author's faith colors his reading of the evidence, and that the Preface makes the report sectarian. The report accepts the premise as a rule for itself: a legislator should not be asked to accept a proposition because a religious text teaches it, and the report does not ask.

The answer is in the structure. The Preface is marked as faith-based reasoning and set apart from the evidence; it states that every finding and recommendation rests on the Constitutions, statutes, decisions, data, and studies cited, and that a reader who does not share the author's

faith may accept or reject each on those sources alone. It ends: “That is the whole of the faith argument.” No finding in Chapters 1 through 12 cites Scripture, and no recommendation depends on it. The Preface’s own conclusion, that an institution that may remove a child should give written reasons, keep a record, prove before it punishes, and answer for knowing harm, is also the conclusion of Chapters 4, 8, 10, and 11, reached there on secular evidence.

The legal form of the objection fails as well. The Supreme Court of the United States has held that the Establishment Clause “must be interpreted by ‘reference to historical practices and understandings,’” and that the Court “long ago abandoned Lemon and its endorsement test offshoot.” Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Long before that decision, the Court held that “it does not follow that a statute violates the Establishment Clause because it ‘happens to coincide or harmonize with the tenets of some or all religions.’” Harris v. McRae, 448 U.S. 297, 319 (1980) (quoting McGowan v. Maryland, 366 U.S. 420, 442 (1961)). A law protecting a child’s bond with each parent does not become religious because Scripture also honors that bond. The report asks the Legislature to enact no religious test, no religious exercise, and no preference for any faith; the Preface is the author’s own speech about why he does this work, and the recommendations stand on the evidence that follows it.

No ruling or finding on this question would change a recommendation, because none rests on the Preface. A reader who strikes it loses nothing the argument needs.

13.11 What the Report Concedes

The report concedes in whole that no evidence shows Title IV-D financing changes custody outcomes in Texas; that federal money does not explain Texas removals; that Texas is a median collector of current support; that the causal research on removal points in both directions; that judges’ federal immunity in § 1983 suits is beyond the Legislature’s reach; that the Legislature may not command a prosecutor; that Article I, Section 37 has no settled standard of review, so the procedural proposals are policy rather than constitutional command; that the Title IV-D associate-judge office is constitutional; that a one-session replacement of the Family Code would be unwise; that no Texas data record custody outcomes by parent or court; that no study shows more time with the more securely attached parent helps a child; that no study validates scoring the Attachment Q-Sort from video; and that a trial asks more of a child than a plea does.

It concedes in part that the attachment measures it would require are contested by the field’s own leaders for this use; that rigorous father-absence estimates are smaller than circulating ones, and some are null; that the cautionary infant-overnight findings have not been refuted by stronger designs; that the advantage of shared care narrows where conflict is high and reflects selection in part; that a presumption narrows a judge’s attention and can leave a child with a parent whose abuse goes unproved; that repeal of no-fault divorce keeps part of the exit channel Stevenson and Wolfers identify and none of the bargaining channel, at the cost of adversarial fault trials, and that the evidence for repeal is partial and predicts nothing about divorce rates; that several child support positions conflict with federal conditions and carry a price up to the whole TANF grant; and that the effects of liability on the supply of appointees, of

heavier penalties on reporting, and of findings and recording on court budgets are unmeasured.

The report does not accept that the Code's operative sections carry out its declared policy, that the present procedure is adequate to a fundamental right, or that a system which does not record its own outcomes can claim that they serve the child.

13.12 What follows

Every recommendation in this report has now met its strongest objection, and the record shows which objections succeed in whole, which in part, and what evidence would make the others succeed. Most of that evidence is data Texas does not collect: outcomes by court and by parent, findings and their grounds, allegations and their dispositions, appointments and their fees. The objections therefore point to the same first step as the argument. The Conclusion takes up what the report has established, what it leaves to be established, and why measuring what the State does to children is where the 90th Legislature should begin. # Conclusion

This report began with a standard the Legislature wrote for itself. Texas found that lasting marriage and the raising of children in stable, two-parent households serve the State, and that the State must pursue that end by evidence-based pathways (H.B. 3284, § 2). The people of Texas then wrote into their Bill of Rights that a parent's responsibility to nurture and protect a child carries with it a fundamental right to the child's care, custody, and control (Tex. Const. art. I, § 37). The question was whether the family law system meets the standard the State has chosen and honors the right the State has named. The answer, chapter by chapter, is that it does not, and that the reasons can be found in the text of its own statutes, rules, and budgets.

The argument ran from the child to the remedy. Chapter 2 asked what the evidence establishes about children, at the strength of each design, and found one principle that survives every contrary study: continuity of each fit parent's caregiving relationship. The randomized trials show that caregiving can be changed and that changing it changes children. The longitudinal record shows that the relationship is moderately stable and responsive. The causal research on father absence shows a real loss, and the first study to allocate custody by the random assignment of judges estimated, in a working paper not yet peer reviewed, a benefit to children from joint custody, chiefly joint legal custody, at the margin of contested cases. None of this predicts the course of a single child, and the report never claimed it does. It tells a legislature what rule to write for many children.

Chapter 3 read the Family Code against that principle and against itself. A Code that makes the best interest of the child its primary consideration never says what the best interest is. A Code that declares a policy of frequent and continuing contact presumes as best a schedule it calls a minimum. A Code that gives the parties a jury withholds from the jury the question parents most need decided. A Code governing a right the Constitution calls fundamental allocates it on a preponderance of the evidence. And a Code written in a State that has found lasting marriage to be in its interest lets either spouse dissolve a marriage without a reason. These are not failures of application. They are written into the text.

Chapter 4 followed the text into the courtroom. The decision that matters most for a child,

where the child will live while the case is pending, is made first, on the least process, and is reviewable only by extraordinary writ. Contested custody can be decided by an officer no voter chose, whose order becomes the court's unless a parent acts within days. Findings come only on request; a court reporter is optional before most associate judges; the jury right is almost never exercised; and tens of thousands of parents face the system without a lawyer. Chapter 5 showed what pays for this structure and what the payment counts: orders, collections, and placements, measured by indicators that never ask whether a child kept a parent. Chapter 6 examined the instruments that decide contested cases, the custody evaluation, the abuse allegation, and the ex parte order, and found that each permits a consequential restriction of a parent on a method not validated for that use and under a standard of proof well below the interest at stake. Chapter 7 traced the support order that follows every custody order and found a debt that grows by operation of law, detached in places from parentage and from ability to pay. Chapter 8 measured the State as custodian against the standards it accepted and found that it met none of the seven outcomes federal reviewers measured. Chapter 9 showed how those who work within the rules participate, openly and lawfully, in writing and teaching them, with no requirement that the rules be measured against what they do to children. Chapter 10 found the consequences for knowing harm narrow and often foreclosed, and Chapter 11 found that the record needed to prove any of it is often not kept.

The first two lenses of Chapter 1 converge on one conclusion, and the third shows what is unmeasured. Developmental science says the child's relationship with each fit parent is the thing to preserve. Due process says that a right the Constitution calls fundamental should not be taken on procedures built for disputes over property. The financing lens shows what the State does not measure: the federal measures count orders, collections, and placements, and no source read shows that the counting changes any outcome for a child. Where the first two point the same way, the Legislature has its answer, and the third tells it what to measure.

Chapter 12 turned that answer into a program the 90th Legislature can enact in order. It does not ask for a new Code in a single session. It asks for a first group of fifteen bills, each amending named sections of the Code the courts already know, and up to four joint resolutions, two of them offered as insurance: repeal of unilateral no-fault divorce with an express ground for family violence and abuse, and a measured review after four years; an equal-parenting presumption for fit parents, rebuttable by clear and convincing evidence, with a stepped schedule for the first year of a child's life; findings and a recorded hearing in every ruling on a child's custody; the elected judge for every contested decision about a parent's right unless every party consents in writing; a fixed, blind, validated evaluation in place of the open-ended one; allegations of serious crimes against children referred for investigation on a fast track and tried where the proof is highest, with a duty on the prosecutor to present to a grand jury on a magistrate's finding of probable cause or to file written reasons; a failsafe by which no plea may reduce a parent's time and only a jury may do so; support tied to parentage and ability to pay; a higher standard for removal, with an independent audit of child protective services followed by a transition fixed by statute; consequences for knowing misconduct by any court actor or official, defined by conduct and not by rulings; and public data on how the law is applied.

Chapter 13 put the strongest objections to each of these as their best proponents would put them, conceded what the record concedes, and answered the rest.

What follows from the whole is a choice about where the burden lies. Today a fit parent carries the burden of keeping a relationship with a child against procedures, schedules, fees, and presumptions that the State wrote. The evidence reviewed here supports moving that burden to the State and to anyone who would separate a child from a fit parent: to prove the reason, by evidence suited to the right at stake, on a record that can be reviewed, before a judge the public can hold to account. That is what the Legislature asked for when it called for evidence-based pathways to strong families, and it is what the Constitution invites the Legislature to protect.

The Commission's statute asks it to identify the laws that discourage Texans from marrying and raising children and to recommend how to reduce the incidence of divorce and family dissolution. The Senate's charges ask for procedures that are fair, consistent, and truly in children's interest, and for judges trained on evidence rather than advocacy. This report offers both bodies the same answer. Preserve each child's relationship with each fit parent; make every departure from that rule prove itself; and let Texas measure, for the first time, what its family courts do to the children they serve. # Limits of This Report

The Conclusion stated what this report asks of the Commission, the Senate, and the Legislature; this closing section states what the report does not establish. Every finding has been stated at the level its evidence supports, and the chapters state the limit of each source where the source is used. This section gathers the limits that run across the whole argument. They define what the report establishes and what it leaves to be established, and each is stated with the reason it exists.

Custody outcomes in Texas are not publicly recorded

The report does not establish how Texas courts divide conservatorship or possession between mothers and fathers, between represented and self-represented parties, or between one court and another. It cannot, because the State does not publish those outcomes. No public Texas dataset found for this report records the conservatorship designation, the possession schedule, whether the order was agreed or contested, or the sex of each parent, and none reports outcomes by judge. The Office of Court Administration reports family cases by type and by manner of disposition, and the Government Code requires it to report, court by court, only the clearance rate, the average time to disposition, and the age of the pending caseload (Tex. Gov't Code § 72.083(b)). The one sex-specific figure the State publishes, the Attorney General's statement that about 10 percent of the noncustodial parents in its child support caseload are mothers, describes that caseload and not the result of contested custody cases.

The report therefore makes no claim about outcomes by parent sex or by court. Its argument rests on the text of the Code, the procedures it prescribes, the State's budget and agency data, and the research evidence, which together show what safeguards are missing whatever the pattern of outcomes may be. The absence of outcome data is treated as a finding, and Chapter 11 recommends that the State collect and publish it. Until it does, no one, including the author,

can say with evidence how the best-interest standard is applied across Texas.

The Swedish random-judge study is an unpublished working paper

The most rigorous study of custody allocation itself, which used the random assignment of Swedish custody disputes to judges who differ in how often they award joint custody, was released in July 2026 as a discussion paper (Canessa et al., 2026). Its design supports a causal estimate and is graded here as Grade A in design, pending peer review: the paper has not completed peer review, and its findings may change before publication. Its estimates also apply to a particular group: disputed cases at the margin, in which judges could reasonably differ. The authors exclude cases, such as those involving abuse, in which every judge would deny joint custody, and they conclude only that a modest expansion of joint custody among disputed, marginal cases is likely to improve family welfare. Joint custody in the Swedish setting is chiefly joint legal custody, not an equal division of time, and children's mental health was measured through prescriptions, which capture only severe problems. The report presents the study with each of these limits and does not rest any recommendation on it alone.

The evidence on overnight care for young children is contested

The report does not establish that overnight care with both parents benefits every infant or toddler, and it does not establish that such care harms any. The research on this question is correlational, small in its key cells, and divided. Some studies found frequent infant overnights associated with irritability or insecurity; others found no effect, no association with the age at which overnights began, or later benefit in retrospective reports from young adults. Two consensus statements from opposite sides of the debate reach different conclusions. Both agree that the quality of each parent's caregiving and the level of conflict between parents matter more than any schedule. The report's recommendation follows that agreement: substantial time with both parents, including overnights, as the starting point, with a stepped schedule for a child under twelve months that is the same whichever parent has been the primary caregiver, adjusted for an individual child on evidence about that child.

The attachment measures are validated, but not for dividing time

The report does not establish that the instruments it names are valid when administered during a custody dispute, or that they predict which arrangement serves a child. The Adult Attachment Interview and the Attachment Q-Sort are validated as measures of the attachment relationship; they are not validated as a basis for deciding how time is divided. The international consensus statement says as much, and no study read shows that awarding more time to the more securely attached parent improves outcomes, or validates scoring the Attachment Q-Sort from video. The Standard Protocol therefore produces an input to the court's findings and a descriptive report, never a recommendation on custody, and the report presents it as policy that should be withdrawn on the evidence described in Section 13.2.1.

The causal evidence on foster care points in both directions

The report does not establish that removing children from their homes harms them, and it does not establish that removal helps them. Studies using the random rotation of child protection investigators found that children on the margin of placement fared worse when placed in Illinois in the 1990s and better when placed in Michigan in the 2010s, with gains in Michigan that appeared after most children had been reunified with their parents. A Swedish study using the random assignment of judges found that court-ordered removal of older children, about half of whom were placed in group or institutional care, raised mortality and psychiatric hospitalization. The authors of these studies attribute the differences to the length and stability of placements, the age of the children, the setting of care, and what happened to the parents. Every estimate describes the marginal child in one place and period; none describes the child whom every investigator would remove. The report draws from this evidence a conclusion about procedure and the quality of care after removal, not a general claim about removal itself.

Effects on groups are not predictions for individuals

Nearly every scientific finding in the report is an average across many children or families. The meta-analytic effect of joint custody is small, about a quarter of a standard deviation in Bauserman's meta-analysis (2002), and smaller in a later meta-analysis (Baude, Pearson & Drapeau, 2016); the associations between attachment security and later symptoms are modest for any one child; the randomized caregiving trials used institutionalized or high-risk samples, not families in custody litigation. None of these findings predicts what will happen to a particular child. They inform the rules a legislature writes for many cases; the facts of each case remain for the court that hears it.

The constitutional effect of Article I, Section 37 is undecided

The report does not establish what standard of review or proof Article I, Section 37 requires. The Supreme Court of Texas has expressly reserved that question, and no decision of a court of appeals applying the section was found. The federal decisions that protect parental rights against nonparents, and the Texas decisions that apply the fit-parent presumption, have not been extended to disputes between two fit parents. Where the report asks the Legislature to require more process than the courts have held the Constitution demands, it presents the request as policy.

The evidence for repealing no-fault divorce is partial

The report does not establish that repeal would reduce divorce or improve outcomes for children in Texas, and it predicts nothing about divorce or marriage rates. The lead recommendation rests on the policy of H.B. 3284, which directs the Commission to identify laws that discourage marriage and to recommend how to reduce the incidence of divorce and family dissolution (§ 7(1), (3)(B)(ii)), and on the long-run outcomes of children exposed to unilateral divorce regimes (Gruber, 2004), which the report grades B: the design is a natural experiment,

but it was read in part, and the same method yields the contrary Stevenson and Wolfers (2006) results for adults. The report therefore asks that the Legislature require a measured review after four years.

The report does not compute fiscal notes

The report does not estimate the cost of its recommendations. Pricing legislation is the function of the Legislative Budget Board, which prepares a fiscal note for each bill. Where the report discusses cost, it reports prices set by others: the Board's fiscal notes on related bills in earlier sessions, the State's budget and agency data, published estimates of the cost of child maltreatment, and the benefit-cost results of the Washington State Institute for Public Policy. Those figures describe other bills, other States, or national models; none is a fiscal note for a recommendation of this report.

Federal law constrains what Texas may do alone

Several recommendations operate inside federal programs that Texas has chosen to join, and the report states the federal constraint wherever a recommendation meets one. The child support program must use guidelines that meet federal requirements, including a low-income adjustment, as a condition of State plan approval (45 C.F.R. § 302.56); a State's grant for Temporary Assistance for Needy Families depends on its operating an approved child support program (42 U.S.C. § 602(a)(2)), and noncompliance carries a penalty (42 U.S.C. § 609(a)(8)). Each unpaid installment of support is a judgment by operation of law that may not be modified retroactively (42 U.S.C. § 666(a)(9)), and a signed acknowledgment of paternity must be treated as a legal finding of paternity and a basis for a support order without further proceedings (42 U.S.C. § 666(a)(5)(D)(ii); 45 C.F.R. § 302.70(a)(5)(vii)); the report's proposal to require genetic testing before an acknowledgment is signed has not been tested with the federal child support agency. Federal foster care reimbursement depends on specific judicial findings in the first order sanctioning a removal (42 U.S.C. § 672(a)(2)(A); 45 C.F.R. § 1356.21). Federal law also governs immunity for good-faith reporters of abuse, the standards that apply to Indian children, interstate custody jurisdiction and enforcement, and the interstate and firearm effects of protective orders. Texas may decline a federal program and its funds, or seek a waiver within the limits Congress has set; it may not keep the funds and disregard the conditions. Where a recommendation conflicts with a federal condition, the report says so and states the route: a waiver, a change in federal law, or the cost of declining the program.

What the report does not claim about persons

The report makes no claim about the motive of any judge, legislator, agency employee, evaluator, attorney, or organization. It states structures and documented facts and draws no conclusion about intent. The research on elected judges that the report cites concerns criminal sentencing and appellate courts; no study of elected and appointed judges in family or child welfare cases was found, and the report claims no such finding. The report discusses no individual family's case except as the published record of a court permits. # Appendix A. Sources

by Chapter

The author's commercial interest

The author provides Adult Attachment Interview coding, Attachment Q-Sort administration, and Trust-Based Relational Intervention training commercially, and the Standard Protocol would create work for people with his training. The report cannot remove that interest. It discloses it in the Statement of Interest, writes the protocol by criteria and not by product, and recommends a statutory bar on any person who sells training, coding, scoring, or administration services for an approved instrument, or who holds a financial interest in one, serving as an appointee, vendor, or pool administrator. The bar applies to the author. The protocol should be weighed on the evidence of Section 13.2.1 and not on the author's word.

This appendix lists, chapter by chapter, the sources on which each chapter relies and the sections where each is used, so that a reader can go from any finding to its source. Statutes and rules are cited to the official texts of the Texas Legislature, the United States Code, the Code of Federal Regulations, and the Supreme Court of Texas, with the rendering dates given in Appendix B. Full citations are in Appendix B.

A.1 Statement of Interest and Preface

Source	Where relied on
Purvis, McKenzie, Kellermann and Cross (2010)	Statement of Interest
Howard, Call, McKenzie, Hurst, Cross and Purvis (2013)	Statement of Interest
Main, Goldwyn and Hesse (2003); Waters (1995); Pederson and Moran (1995)	Statement of Interest
Holy Bible, King James Version: Psalm 127:3; Matthew 18:5 to 6; Mark 9:42; Luke 17:2	Preface

The Preface quotes Article I, Section 37 of the Texas Constitution, read in the Legislature’s rendering of July 31, 2026.

A.2 Chapter 1. The Question

Source	Where relied on
Senate Committee on State Affairs, interim charges as posted on the committee page, and the hearing notices, minutes, and witness lists of September 14 and 15, 2026	1.1
Senate Committee on State Affairs, Interim Report to the 89th Legislature (January 10, 2025)	1.1
House Committee on Juvenile Justice and Family Issues, 2024 interim hearing notice	1.4

Source	Where relied on
Sunset Advisory Commission, Department of Family and Protective Services review page and meetings calendar	1.1
Department of Family and Protective Services, Self-Evaluation Report (August 31, 2025)	1.1; 1.3.3
Office of Child Support Services, FY2024 Preliminary Data Tables	1.3.3
Congressional Research Service, Child Support Enforcement: Program Basics (RS22380)	1.3.3
van IJzendoorn (1995)	1.3.1
Fraley (2002); Rutter (1999)	1.3.1
Fearon et al. (2010)	1.3.1
Groh et al. (2012)	1.3.1
Zeanah et al. (2009); Bernard et al. (2012); Cicchetti, Rogosch and Toth (2006)	1.3.1
Forslund et al. (2022)	1.3.1
Main, Hesse and Hesse (2011)	1.3.1
Fearon et al. (2014)	1.3.1
Doyle (2007), American Economic Review	1.3.4
Gross and Baron (2022)	1.3.4
McLanahan, Tach and Schneider (2013)	1.5.2
Warshak (2014)	1.5.3
Nielsen (2018)	1.5.3
Fabricius and Suh (2016)	1.5.3
Saunders, Faller and Tolman (2011)	1.5.3
Emery (2021)	1.5.3; 1.5.4
Baude, Pearson and Drapeau (2016)	1.5.4
Verhage et al. (2016)	1.5.5
van IJzendoorn, Vereijken, Bakermans-Kranenburg and Riksen-Walraven (2004)	1.5.5
Office of Court Administration, District Courts Activity Detail, fiscal year 2025	1.5.6
Office of the Attorney General, Handbook for Noncustodial Parents	1.5.6
In re K.N. (Tex. June 5, 2026)	1.3.2
In re H.S. (Tex. June 5, 2026)	1.3.2
Holick v. Smith	1.3.2
Mathews v. Eldridge; Troxel v. Granville; Santosky v. Kramer; Stanley v. Illinois	1.3.2
Rivera v. Minnich	1.3.2
In re C.J.C.	1.3.2

Source	Where relied on
In re Derzapf	1.3.2

The chapter rests on H.B. 3284, 89th Legislature, Regular Session, Sections 2, 3, 4, 7, and 9, read in the enrolled text; on Family Code Sections 101.007, the section list of Chapter 101, 105.001, 105.005, 153.001, 153.002, 153.131, 153.134, 153.251, 153.252, 153.258, 201.101, 201.107, and 263.307, read in the Legislature's text rendered December 13, 2025, with Sections 6.507 and 109.001 read for the October 6, 2026 research record; on Article I, Sections 15, 19, and 37 of the Texas Constitution, rendered July 31, 2026; on Government Code Section 72.083, rendered October 1, 2026; on 42 U.S.C. Section 672(a)(2)(A) in the 2024 edition of the United States Code; and on 45 C.F.R. Sections 305.2 and 305.31, current to October 1, 2026, and Section 1356.21(b)(1), current to October 2, 2026. The count of "best interest" in the Family Code was computed on the December 13, 2025 text.

A.3 Chapter 2. The Child

Source	Where relied on
Main, Hesse and Hesse (2011)	2.2; 2.12
Main, Goldwyn and Hesse (2003)	2.2.1
van IJzendoorn (1995)	2.2.1
Verhage et al. (2016); Verhage et al. (2018)	2.2.1
Bakermans-Kranenburg and van IJzendoorn (1993); Bakermans-Kranenburg and van IJzendoorn (2009); Sagi et al. (1994)	2.2.1
van IJzendoorn, Vereijken, Bakermans-Kranenburg and Riksen-Walraven (2004)	2.2.2
Waters (1995); Pederson and Moran (1995)	2.2.2
Cadman, Diamond and Fearon (2018)	2.2.2
van IJzendoorn, Schuengel and Bakermans-Kranenburg (1999)	2.2.2
Waters, Merrick, Treboux, Crowell and Albersheim (2000)	2.3
Fraley (2002); Rutter (1999)	2.3
Fearon et al. (2010)	2.4
Groh et al. (2012)	2.4
Zeanah et al. (2009); McGoron et al. (2012); Bernard et al. (2012); Cicchetti, Rogosch and Toth (2006)	2.5
Bokhorst et al. (2003)	2.6
Fearon, Shmueli-Goetz, Viding, Fonagy and Plomin (2014)	2.6
Gee et al. (2014); Hostinar, Sullivan and Gunnar (2014)	2.7

Source	Where relied on
McLanahan, Tach and Schneider (2013)	2.8.1
Markowitz and Ryan (2016)	2.8.2
Culpin et al. (2013)	2.8.2
Harper and McLanahan (1999, 2004)	2.8.3
Gruber (2004)	2.8.4
Stevenson and Wolfers (2006)	2.8.4
Bauserman (2002)	2.9.1
Baude, Pearson and Drapeau (2016)	2.9.1
Riser (2025)	2.9.1
Langmeyer, Recksiedler, Entleitner-Phleps and Walper (2022)	2.9.1; 2.9.2
Nielsen (2018)	2.9.1; 2.9.2
Steinbach (2019)	2.9.2
Vowels et al. (2023)	2.9.2
Bergström et al. (2015)	2.9.2
Johansen et al. (2022)	2.9.2
Dutch study of father involvement before and after separation	2.9.2
Braver and Votruba (2018)	2.9.2
Augustijn (2021)	2.9.3
McIntosh, Smyth, Kelaher, Wells and Long (2010)	2.9.3; 2.10.1
Halla (2013)	2.9.4
Halla (2015)	2.9.4
Two working papers on schooling under joint custody laws, as reported by Halla (2015)	2.9.4
Brinig and Buckley (1998)	2.9.4
Emery (2021)	2.9.1; 2.9.2; 2.10.1; 2.10.2; 2.12
Solomon and George (1999)	2.10.1; 2.10.2
McIntosh, Smyth and Kelaher (2013)	2.10.1
Warshak (2014)	2.10.1; 2.10.2
Warshak (2015)	2.10.1
Tornello et al. (2013)	2.10.1
Pruett, Ebling and Insabella (2004)	2.10.1
Altenhofen (2008)	2.10.1
Fabricius and Suh (2016)	2.10.1
McIntosh, Smyth and Kelaher (2015)	2.10.2
Pruett, McIntosh and Kelly (2014)	2.10.1; 2.10.2
Forslund et al. (2022)	2.10.2; 2.12
Canessa et al. (2026), Cowles Foundation Discussion Paper No. 2543	2.11

Source	Where relied on
Thompson, Simpson and Berlin (2022)	2.12
Scott (2020)	2.12

The chapter rests on Family Code Sections 153.001, 153.002, 153.251, and 153.254, read in the Legislature's text rendered December 13, 2025, and on Section 2 of H.B. 3284, read in the enrolled text.

A.4 Chapter 3. The Code as Written

Source	Where relied on
In re K.N.; In re H.S.; In re J.D.H. (Tex. 2026)	3.1
Holick v. Smith	3.1
Troxel v. Granville; Santosky v. Kramer; Mathews v. Eldridge; Stanley v. Illinois; Michael H. v. Gerald D.	3.1
Rivera v. Minnich	3.1
Ziegler, Cahn and Eichner (2026)	3.1
In re C.J.C.	3.4; 3.8
In re V.L.K.	3.4; 3.8
Office of Court Administration, Family Case Activity Detail, fiscal year 2024	3.6
Office of Court Administration, District Courts Activity Detail and Statutory County Courts Activity Detail, fiscal year 2025	3.6
Kentucky Legislature record of H.B. 528 (2018)	3.9
Stone (2025)	3.9
Advocacy blog account of Kentucky family court filings, citing a newspaper report	3.9
Fabricius et al. (2018)	3.9
Halla (2013)	3.9
Halla (2015)	3.9
Canessa et al. (2026)	3.9
Legislative Budget Board fiscal notes on five equal-parenting bills (80th, 82nd, 84th, 86th, and 87th Legislatures)	3.9
Gruber (2004)	3.11
Stevenson and Wolfers (2006)	3.11
Meshell v. State	3.11
Boddie v. Connecticut	3.11

The chapter rests on Family Code Sections 6.001 to 6.008, 6.702, 7.001, 7.002, 101.001 and the rest of Chapter 101 (searched for "best interest"), 105.001, 105.002, 105.005, 151.001, 153.001, 153.002, 153.004, 153.0071, 153.009, 153.072, 153.131, 153.134, 153.135, 153.191, 153.251 to

153.258, 153.3101, 153.311 to 153.314, 153.317, 153.3171, 153.432, 153.433, 154.130, 156.101, 156.102, the opening of Section 161.001(b), and 263.307, read in the Legislature's text rendered December 13, 2025, with a full-code search for "best interest"; on Article I, Sections 13, 15, 16, 19, and 37 of the Texas Constitution, rendered July 31, 2026; on Texas Rule of Civil Procedure 296, read in the stored rules, with Rules 297 to 299a relied on from the October 6, 2026 research record; on Sections 2 and 7 of H.B. 3284 in the enrolled text; and, for other States, on KRS 403.270, 403.280, and 403.315, West Virginia Code Section 48-9-102a, Florida Statutes Section 61.13(2)(c), Missouri Revised Statutes Section 452.375, and Arizona Revised Statutes Section 25-403.02, read at the legislatures' official sites through a summarizing fetch tool on October 6, 2026, and Arkansas Act 604 of 2021, read in its enrolled text, with the codified definition and rebuttal standard of Arkansas Code Section 9-13-101 read through a secondary reproduction.

A.5 Chapter 4. The Code as Operated

Source	Where relied on
Mathews v. Eldridge; Troxel v. Granville; Santosky v. Kramer; Stanley v. Illinois	4.1; 4.13; 4.14
In re K.N.	4.1
In re C.J.C.	4.3
In re Derzapf	4.3
Walker v. Packer; Dancy v. Daggett	4.3
In re Mays-Hooper	4.3
In re David O'Connor (Tex. App. Austin 2021)	4.3
Texas Conservative Coalition Research Institute, staff paper "Texas Family Courts"	4.4; 4.10
Forslund et al. (2022)	4.4
Fabricius and Suh (2016)	4.4
Office of Court Administration, District Courts Activity Detail, fiscal year 2025	4.4; 4.9; 4.13
Office of Court Administration, Statutory County Courts Activity Detail, fiscal year 2025	4.9
Office of Court Administration, Family Case Activity Detail, fiscal year 2024	4.9
Office of the Attorney General v. C.W.H.	4.5; 4.6; 4.14
Legislative Budget Board, Financing the Judiciary in Texas (ID 9394), page 20	4.6
Hicks v. Feiock	4.12
Turner v. Rogers	4.12

The chapter rests on Family Code Sections 6.502, 6.507, 6.711, 105.001, 105.002, 105.003, 105.005, 105.006, 106.002, 107.112, 107.115, 109.001, 153.001, 153.002, 153.072, 153.131, 153.258, 154.130, 156.006, 157.001, 157.006, 157.008, 157.163, 157.166, 157.167, 201.001,

201.004, 201.005, 201.007, 201.009, 201.011, 201.012, 201.013, 201.015, 201.016, 201.017, 201.101 to 201.107, 201.1021, 201.1041, 201.1042, 201.1045, 201.1065, 201.1066, and 201.110 to 201.113, read in the Legislature's text rendered December 13, 2025, with Section 157.161 confirmed in the same text for this ledger on October 7, 2026; on Government Code Sections 21.002, 52.046, and 72.083, rendered October 1, 2026; on Article I, Sections 15 and 37 of the Texas Constitution, rendered July 31, 2026; on Texas Rules of Civil Procedure 296 to 299a; on Texas Rules of Appellate Procedure 13.1, 28.1, 28.4(a), 52.1, 52.7, and 52.8, in the file dated February 6, 2026; on Rules of Judicial Administration 6.1 and 6.2, in the file dated July 1, 2026; and on Rules of Judicial Education 2(a) and 4(b), updated August 18, 2025.

A.6 Chapter 5. The Money

Source	Where relied on
Congressional Research Service, Child Support Enforcement: Program Basics (RS22380, January 12, 2026 update) and Parenting Time Agreements and Child Support (IF13043)	5.2
Legislative Budget Board, Summary of Recommendations, Office of the Attorney General	5.2
Office of the Attorney General, Child Support Division, Director's written testimony to a subcommittee of the House Committee on Ways and Means	5.2
Office of Child Support Services, FY2024 Preliminary Data Tables P-4, P-36, P-38, P-44, P-52, and P-83 to P-88	5.2; 5.3; 5.4
United States Census Bureau, state population estimates (SCPRC-EST2024)	5.4
Legislative Budget Board, Financing the Judiciary in Texas (ID 9394), page 20	5.3
Office of the Attorney General v. C.W.H.	5.3
Office of the Attorney General, Legislative Appropriations Request for fiscal years 2028 and 2029	5.3; 5.11
Administration for Children and Families, State Financing of Child Support Enforcement Programs	5.3
Children's Bureau, Title IV-E Foster Care program page; Congressional Research Service report R45270	5.5
Department of Family and Protective Services,	5.5

Source	Where relied on
Title IV-E Finance Handbook for County Contracts, Sections 5000, 5100, 5111, and 5115	
Department of Family and Protective Services, Self-Evaluation Report (August 31, 2025)	5.5; 5.7
Children's Bureau, Form CB-496 Title IV-E claims and participation, fiscal year 2023	5.5
Children's Bureau and Office of Child Support Services joint letter (July 29, 2022); Department handbook Section 5343.12	5.5
Doyle and Peters (2007)	5.6; 5.11
Doyle (2007b), Journal of Public Economics	5.6; 5.11
Bald, Doyle, Gross and Jacob (2022)	5.6; 5.11
Doyle (2007a), American Economic Review	5.6
Gross and Baron (2022)	5.6
Baron and Gross (2025)	5.6
Legislative Budget Board, Strategic Fiscal Review 2026, Department of Family and Protective Services (ID 9438), Findings 1, 3, and 5	5.7
House committee bill analyses of H.B. 1546 (88th Legislature) and H.B. 2524 (89th Legislature)	5.8
Texas Indigent Defense Commission, Family Protection Representation data, fiscal year 2024	5.8
Legislative Budget Board fiscal notes and bill histories of S.B. 2501 and S.B. 1838 (89th Legislature)	5.8
Schramm et al. (2013)	5.9
Wildfeuer, Pearson, Hrovat and Brown (2025)	5.9
Scafidi (2008)	5.9
Nock and Einholf (2008)	5.9
Fang, Brown, Florence and Mercy (2012)	5.9
Peterson, Florence and Klevens (2018)	5.9
Bellis et al. (2019)	5.9
Currie and Widom (2010)	5.9
Cohen and Piquero (2009)	5.9
Washington State Institute for Public Policy, Benefit-Cost Results	5.10
García, Heckman, Ermini Leaf and Prados	5.10

Source	Where relied on
(2020)	

The chapter rests on 42 U.S.C. Sections 602, 609, 654, 658a, 666, and 1315 in the 2024 edition of the United States Code; on 42 U.S.C. Section 672(a)(2)(A) and 45 C.F.R. Section 1356.21(b), (c), and (d), read for the October 6, 2026 research record; on 45 C.F.R. Sections 302.56, 302.70, 303.100, 303.106, 305.2, 305.31, 305.33, and 305.61, current to October 1, 2026; on Family Code Sections 106.002, 107.023, 107.115, 157.167, 160.636, 201.107, 201.1041, 231.001, and 231.002, read in the Legislature's text rendered December 13, 2025; on Article I, Section 18 of the Texas Constitution, rendered July 31, 2026; on Government Code Section 72.083(b), rendered October 1, 2026; and on Section 2(1) of H.B. 3284 in the enrolled text. 42 U.S.C. Section 655 and Section 469B of the Social Security Act were not read, and the chapter says so.

A.7 Chapter 6. The Decisions

Source	Where relied on
Mathews v. Eldridge	Chapter introduction
Office of Court Administration, District Courts Activity Detail, fiscal year 2025	6.1.1
Bow and Quinnell (2001); Bow, Gould, Flens and Greenhut (2006); Ackerman and Brey Pritzl (2011)	6.1.2; 6.1.4
Byrne, O'Connor, Marvin and Whelan (2005)	6.1.2
Emery, Otto and O'Donohue (2005)	6.1.2
Saunders, Faller and Tolman (2011)	6.1.2; 6.2.2
Association of Family and Conciliation Courts, Guidelines (2022)	6.1.2; 6.1.4; 6.1.5; 6.1.6
van IJzendoorn (1995); Bakermans-Kranenburg and van IJzendoorn (1993); Sagi et al. (1994); van IJzendoorn et al. (2004)	6.1.3
Verhage et al. (2016); Verhage et al. (2018)	6.1.3
Cadman, Diamond and Fearon (2018)	6.1.3
Main, Goldwyn and Hesse (2003); Waters (1995); Pederson and Moran (1995)	6.1.3
Main, Hesse and Hesse (2011)	6.1.3; 6.1.4
Forslund et al. (2022)	6.1.3; 6.1.4; 6.1.6
Thompson, Simpson and Berlin (2022)	6.1.4
Senate Committee on State Affairs, interim charge, Protecting Texas Families	6.1.6
Granqvist et al. (2016)	6.1.6
Trocmé and Bala (2005)	6.2.2
Bala, Mitnick, Trocmé and Houston (2007)	6.2.2
Saini, Laajasalo and Platt (2020)	6.2.2; 6.5

Source	Where relied on
Later Canadian analysis of malicious referrals in custody-dispute investigations	6.2.2
Johnston, Lee, Olesen and Walters (2005)	6.2.2
Thoennes and Tjaden (1990)	6.2.2
Faller and DeVoe	6.2.2
O’Donohue, Cummings and Willis (2018)	6.2.2
Department of Family and Protective Services, Self-Evaluation Report (August 31, 2025)	6.2.3
Texas Children’s Commission, Child Welfare Law Bench Book, protective orders chapter	6.3.1
United States v. Rahimi	6.3.2; 6.3.4
Holt, Kernic, Lumley, Wolf and Rivara (2002)	6.3.3
Benitez, McNiel and Binder (2010)	6.3.3
Logan and Walker (2009); Muller, Desmarais and Hamel (2009)	6.3.3
Office of Court Administration, fiscal year 2025 activity reports (protective orders)	6.3.3
Archer (2000)	6.4.1
Archer (2002); Desmarais et al. (2012)	6.4.1
White, Smith, Koss and Figueredo (2000)	6.4.1
Chen et al. (2020)	6.4.1
Stevenson and Wolfers (2006)	6.4.1
United States Department of Health and Human Services, Child Maltreatment 2023	6.4.1
Minneapolis arrest experiment (Sherman and Berk)	6.4.2
Maxwell, Garner and Fagan (2001)	6.4.2
Halla (2015)	6.4.2
Canessa et al. (2026)	6.4.2
Flitcraft (1978)	6.4.3
Centers for Disease Control (1990)	6.4.3
Rand (1997)	6.4.3
United States v. Morrison (Souter, J., dissenting)	6.4.3
S. Rep. No. 103-138 (1993)	6.4.3
S. Hrg. 103-726 (1993), statement of John Nelson, M.D.	6.4.3
Harman, Kruk and Hines (2018)	6.5
Harman, Warshak, Lorandos and Florian (2022)	6.5
Milchman, Geffner and Meier (2020)	6.5
Mercer (2019)	6.5

Source	Where relied on
United Nations Special Rapporteur on violence against women and girls, A/HRC/53/36	6.5
Hine (2025)	6.5

The chapter rests on Family Code Sections 71.004, 82.009, 83.001, 83.002, 83.0025, 83.003, 83.004, 83.006, 84.001, 85.001, 85.022, 85.025, 105.005, 107.009, 107.101, 107.103 to 107.115, 153.001, 153.002, 153.004, 153.013, 153.131, 153.134, and 261.107, read in the Legislature's text rendered December 13, 2025, with a text search for "credible evidence" (Sections 153.004, 153.010, 153.501, and 153.502) and for "alienat"; on Penal Code Sections 25.03 and 46.04, rendered April 10, 2026; on Article I, Section 37 of the Texas Constitution, rendered July 31, 2026; on Texas Rule of Evidence 702, effective July 2, 2026, read and not quoted; and on 18 U.S.C. Section 922(g)(8) in the 2024 edition and 18 U.S.C. Section 2265 as read for the October 6, 2026 research record.

A.8 Chapter 7. Child Support

Source	Where relied on
National Conference of State Legislatures, child support guideline models; American Bar Association fifty-state survey (2025)	7.2
Hodges, Meyer and Cancian (2019)	7.2
Cancian, Kim and Meyer (2021); Cancian, Cook and Meyer (2019)	7.2
Office of Child Support Services, FY2024 Preliminary Data Tables P-83 to P-88	7.3; 7.9.8
Meyer, Cancian and Waring (2020)	7.6
Solmeyer et al. (2024)	7.6
Selekman and Johnson (2019)	7.6
Congressional Research Service, R41762 (2011)	7.6
Skemer (2023)	7.6; 7.10
Cancian, Meyer and Wood (2019)	7.6
MDRC, Parents' Fair Share demonstration	7.6
Schroeder and Doughty (2009)	7.6
Ex parte Hall	7.7
In re Henry	7.7
Hicks v. Feiock; Bearden v. Georgia	7.7
Turner v. Rogers	7.7; 7.9.7
Cozzolino (2018)	7.7
Patterson (2008)	7.7
Harper and McLanahan (1999, 2004)	7.8
Office of the Attorney General, Child Support Division, Director's written testimony	7.8

Source	Where relied on
South Dakota v. Dole; Printz v. United States	7.9
Children's Bureau and Office of Child Support Services joint letter (July 29, 2022)	7.9.6
Legislative Budget Board, Federal Reauthorization of Welfare Reform (2002)	7.9.8
National Federation of Independent Business v. Sebelius	7.9.8
United States Census Bureau, P60-262	7.9.8

The chapter rests on Family Code Sections 154.009, 154.122, 154.125, 154.130, 154.131, 157.006, 157.008, 157.163, 157.167, 157.261, 157.265, 158.001, 160.302, 160.305, 160.307, 160.308, 160.502, 160.607, 160.608, 160.636, 161.005, 232.003, and 232.008, read in the Legislature's text rendered December 13, 2025; on Article I, Sections 16 and 18 of the Texas Constitution, rendered July 31, 2026; on Government Code Section 21.002, rendered October 1, 2026; on Penal Code Section 25.05, rendered April 10, 2026; on 42 U.S.C. Sections 602(a)(2), 609(a)(8), 666(a)(1), (a)(5), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), and (d), and 1315(b)(1), and 18 U.S.C. Section 228, in the 2024 edition of the United States Code; and on 45 C.F.R. Sections 302.56, 302.70(a)(5), 303.100(b) and (c), and 303.106, current to October 1, 2026.

A.9 Chapter 8. The State as Custodian

Source	Where relied on
In re K.N.	8.1
Haaland v. Brackeen	8.4
Mathews v. Eldridge; Santosky v. Kramer	8.4; 8.10
Gypen et al. (2017)	8.5.1
Zlotnick, Tam and Soman (2012)	8.5.1
Doyle (2007), American Economic Review	8.5.3
Doyle (2008)	8.5.3
Gross and Baron (2022)	8.5.4
Baron and Gross (2025)	8.5.4; 8.5.6
Bald, Chyn, Hastings and Machelett (2022)	8.5.4
Helénsdotter (in press)	8.5.5
Warburton, Warburton, Sweetman and Hertzman (2014)	8.5.5
Bald, Doyle, Gross and Jacob (2022)	8.5.6
Children's Bureau, Child and Family Services Reviews: Texas Final Report 2024	8.6.1; 8.8
Department of Family and Protective Services, Self-Evaluation Report (August 31, 2025)	8.6.2; 8.6.3; 8.6.4; 8.8; 8.10
Department of Family and Protective Services, Legislative Appropriations Request for fiscal	8.6.2; 8.8

Source	Where relied on
years 2028 and 2029	
Texas Indigent Defense Commission, Family Protection Representation data, fiscal year 2024	8.6.2; 8.8
Department of Family and Protective Services open data on data.texas.gov (removals, investigations, victims, substitute care, exits)	8.6.3; 8.8
Sunset Advisory Commission review page and meetings calendar	8.6.4
M.D. v. Abbott, 907 F.3d 237 (5th Cir. 2018)	8.7.1
M.D. v. Abbott, No. 24-40248 (5th Cir. Oct. 11, 2024), and the Supreme Court docket	8.7.1
United States Department of Justice, Investigation of the Texas Juvenile Justice Department (August 1, 2024)	8.7.2
State Auditor's Office, Report 23-012	8.7.2
Legislative Budget Board, Strategic Fiscal Review 2026, Department of Family and Protective Services (ID 9438)	8.7.2; 8.8
Children's Bureau, Form CB-496, fiscal year 2023	8.8
Office of Court Administration, Family Case Activity Detail, fiscal year 2024	8.10
Republican Party of Texas, 2026 Platform, plank 194	8.10

The chapter rests on Family Code Sections 161.206, 261.001, 261.107, 261.201(a), (b), and (g), 262.101, 262.102, 262.104, 262.106, 262.107, 262.201, 263.002, 263.201, 263.304, 263.306, and 263.401, read in the Legislature's text rendered December 13, 2025, with Sections 105.002(c) and 105.005 relied on from earlier readings of the same text; and on 42 U.S.C. Sections 671(a)(15), 672(a)(2)(A), 675(5)(C), (E), and (F), and 5106a(b)(2)(B)(xii), 25 U.S.C. Sections 1903(1), 1912(b), (d), (e), and (f), and 1921, in the 2024 edition of the United States Code, and 45 C.F.R. Section 1356.21(b), (c), and (d), current to October 2, 2026, all read for the October 6, 2026 research record and not re-read for this chapter.

A.10 Chapter 9. Capture and the Symmetry Rule

Source	Where relied on
Senate Committee on State Affairs, interim charges and hearing notices	9.1
Pauly (1995)	9.2
Vaughan (1996)	9.2

Source	Where relied on
ProPublica Nonprofit Explorer rendering of the Texas Family Law Foundation's Form 990 data	9.3
Texas Family Law Foundation, legislative volunteers page	9.3
Texas Ethics Commission, 2025 and 2026 lists of lobbyists with clients	9.3
House Committee on Juvenile Justice and Family Issues witness lists, 86th Legislature (April 24 and May 1, 2019), 87th Legislature (H.B. 867 and H.B. 4381), and 88th Legislature (April 19, 2023)	9.4
History of H.B. 922 (86th Legislature)	9.4
Law-firm summary reporting a Foundation survey of lawyers	9.4
Senate Committee on State Affairs, minutes and witness lists of September 14 and 15, 2026	9.4; 9.9
House committee bill analyses of H.B. 1546 (88th Legislature) and H.B. 2524 (89th Legislature); the Legislative Budget Board's note on H.B. 2524	9.5
State Bar of Texas Family Law Section, 2012 report on its legislative process	9.6
Texas Conservative Coalition Research Institute, staff paper "Texas Family Courts"	9.7; 9.9
van Dijk et al. (2020); O'Hara et al. (2019); Mahrer et al. (2018)	9.7.1
Bernard et al. (2012); Cicchetti, Rogosch and Toth (2006)	9.7.1
Canessa et al. (2026)	9.7.1
Forslund et al. (2022)	9.8; 9.10
Public pages of the Texas Center for the Judiciary, the Children's Commission, and the State Bar Advanced Family Law Course	9.8
Bauserman (2002)	9.10

The chapter rests on Government Code Sections 22.110 and 33.001(b), rendered October 1, 2026; on Family Code Sections 105.001(a)(5), 106.002, 152.208, and 261.107, read in the Legislature's text rendered December 13, 2025, including their history lines; on Article I, Section 37 of the Texas Constitution, rendered July 31, 2026; on Rules of Judicial Education 2(a), 2(c), 4(b), 8(a), 12(g)(5)(i), and 12(h)(4)(iii), updated August 18, 2025; and on Canons 3B(8), 4A(1), 4B(1), and 4D(4) of the Code of Judicial Conduct, as amended through June 12, 2026.

A.11 Chapter 10. Accountability

Source	Where relied on
Pierson v. Ray; Stump v. Sparkman; Forrester v. White; Briscoe v. LaHue; Harlow v. Fitzgerald; Pulliam v. Allen	10.2; 10.3.4; 10.4; 10.11
Mireles v. Waco	10.2
Howlett v. Rose	10.2
Ferri v. Ackerman	10.2; 10.4
Twilligear v. Carrell; Dallas County v. Halsey; Delcourt v. Silverman	10.3.1; 10.3.2; 10.4; 10.11
Jones v. Sherry	10.3.1; 10.3.2
Taylor v. Tolbert; Youngkin v. Hines	10.3.2; 10.3.3; 10.4; 10.11
Cantey Hanger, LLP v. Byrd; City of Lancaster v. Chambers; City of Beaumont v. Bouillion	10.3.3; 10.3.4
California A.B. 2475 (2009 to 2010 session), as amended May 11, 2010, and the Assembly Appropriations Committee analysis of May 18, 2010	10.4
Bills to amend Penal Code Section 39.03 (82nd, 83rd, 84th, and 87th Legislatures)	10.5.1
Trocmé and Bala (2005)	10.6
Legislative Budget Board fiscal notes on the 2025 judicial-conduct legislation and the 2025 judicial-conduct constitutional amendment	10.7
Legislative Budget Board account of the 2025 administrative penalty for a knowingly false complaint	10.7
State Commission on Judicial Conduct, fiscal year 2024 complaint and discipline figures	10.7
Meshell v. State	10.8; 10.9
State v. Stephens (Tex. Crim. App. Dec. 15, 2021)	10.8
Webster v. Commission for Lawyer Discipline	10.8
Giboney v. Empire Storage & Ice Co.	10.10

The chapter rests on Penal Code Sections 25.03, 37.02, 37.03, 39.02, 39.03, and 36.06, rendered April 10, 2026, with Sections 36.05, 37.09(d)(1), and 38.05 read for the October 6, 2026 research record; on Family Code Sections 105.001, 106.002, 107.009, 153.013, 201.017, 261.101, 261.106, 261.107, and 261.109, read in the Legislature's text rendered December 13, 2025; on Government Code Sections 33.001 and 33.006, rendered October 1, 2026, and Section 54.104 with the parallel immunity sections of Government Code Chapter 54, read for the October 6, 2026 research record; on Civil Practice and Remedies Code Sections 41.003, 41.008,

101.001, 101.021, 101.025, 101.053, 101.057, 129C.001, and 129C.002, rendered May 14, 2026; on Business and Commerce Code Section 17.50 in the stored code; on Article I, Sections 13, 16, and 37, Article II, Section 1, Article V, Sections 1-a and 21, Article XVI, Section 1, and Article XVII, Section 1 of the Texas Constitution, rendered July 31, 2026; on 42 U.S.C. Sections 1983, 1988(b), and 19403 at the Cornell Legal Information Institute, and Section 5106a(b)(2)(B)(vii) and (b)(3), read for the October 6, 2026 research record; on Texas Disciplinary Rules of Professional Conduct 3.03 and 8.03, effective March 7, 2025, with Rule 1.05 named only as the exception Rule 8.03(d) states; and on Canon 3D of the Code of Judicial Conduct, as amended through June 12, 2026.

A.12 Chapter 11. Transparency

Source	Where relied on
Legislative Budget Board fiscal notes on H.B. 4139 and S.B. 1538 (89th Legislature) and on the 2025 judicial-conduct legislation as it left the House	11.2.3; 11.4.3
Republican Party of Texas, 2026 Platform, plank 178	11.2.3
Office of Court Administration, District Courts Activity Detail, fiscal year 2025	11.3.2
Searches of the Office of Court Administration, the Texas Judicial Council, the Texas Access to Justice Commission, and Texas universities for custody outcome data	11.4.2
Custody X Change, Dads' Custody Time by State, and a law-firm page citing it	11.4.2
Office of the Attorney General, Handbook for Noncustodial Parents	11.4.2
United States Census Bureau, P60-262	11.4.2
Department of Family and Protective Services open data on data.texas.gov	11.4.3
Office of Court Administration, Rule 12	11.5.2
Decisions 15-002, 16-011, 19-026, 22-013, 25-012, 26-005, and 26-011	
Department of Family and Protective Services, Self-Evaluation Report (August 31, 2025)	11.5.3

The chapter rests on Family Code Sections 54.08, 105.001, 105.002(c), 105.003, 107.112, 153.013, 153.072, 153.258, 153.433(b), 154.130(a)(3), 201.009, 201.101(d), 261.107(b), 261.201(a), (b), and (g), 262.107(c), and 262.201(g-2), read in the Legislature's text rendered December 13, 2025; on Government Code Sections 71.035, 72.083, 552.001, 552.003, and 552.0035, rendered October 1, 2026; on Rules of Judicial Administration 12.1, 12.2, 12.3, 12.5,

12.6, and 12.9, in the file dated July 1, 2026; on Texas Rules of Civil Procedure 76a and 296, in a stored file whose edition date is not stated, with Rules 297 to 299 relied on from the October 6, 2026 research record; and on 42 U.S.C. Section 5106a(b)(2) and 45 C.F.R. Section 1356.21(d), read for the October 6, 2026 research record.

A.13 Chapter 12. The Pathway

Source	Where relied on
Sunset Advisory Commission review page and meetings calendar	12.1
Senate Committee on State Affairs, interim charges	12.3.2; 12.3.13
In re Derzapf	12.3.3
Office of Court Administration, District Courts Activity Detail, fiscal year 2025	12.3.4
Office of the Attorney General v. C.W.H.	12.3.5
Legislative Budget Board fiscal note on H.B. 3297 (85th Legislature)	12.3.5
Meshell v. State	12.3.7; 12.4
Holt et al. (2002)	12.3.8
Haaland v. Brackeen	12.3.10
Children's Bureau, Child and Family Services Reviews: Texas Final Report 2024	12.3.10
Howlett v. Rose; Mireles v. Waco; Ferri v. Ackerman	12.3.11
Taylor v. Tolbert	12.3.11
Giboney v. Empire Storage & Ice Co.	12.3.12
In re K.N.	12.4
Ex parte Hall	12.4
United States v. Rahimi	12.5
Printz v. United States; South Dakota v. Dole	12.5
Legislative Budget Board fiscal notes on five equal-parenting bills (80th, 82nd, 84th, 86th, and 87th Legislatures)	12.6
Legislative Budget Board fiscal notes on the 2025 judicial-conduct legislation, and on S.B. 2501, S.B. 1838, H.B. 4139, and S.B. 1538 (89th Legislature), with their bill histories	12.6
H.B. 803 (87th Legislature) fiscal note and summary; H.B. 3379 (88th Legislature) as filed; operative excerpts of S.B. 1702 (88th Legislature) and S.B. 849 (89th Legislature); bill	12.7

Source	Where relied on
history of S.B. 849	
Braver, Ellman and Fabricius (2003)	12.7
Texas Ethics Commission, 2025 and 2026 lists of lobbyists with clients	12.7
House Committee on Juvenile Justice and Family Issues witness lists and the history of H.B. 922 (86th Legislature); bill analyses of H.B. 1546 and H.B. 2524	12.7
Senate Committee on State Affairs witness list of September 14, 2026	12.7
Stone (2025)	12.8

The chapter rests on Family Code Sections 6.001, 6.002, 6.006, 6.008, 6.507, 83.001, 105.001, 107.009, 107.104, 107.108, 109.001, 152.102, 152.201, 152.202, 152.208, 153.002, 153.004, 153.013, 153.072, 153.131, 153.252, 153.254, 153.258, 153.312, 153.313, 153.3171, 154.131, 160.305, 161.005, 201.005, 201.009, 201.015, 201.101, 201.1041, 261.101, 261.107, 261.109, and 262.201, read in the Legislature's text rendered December 13, 2025; on Article I, Sections 16, 18, and 37, Article II, Section 1, Article III, Sections 2 and 5, Article V, Sections 1-a, 11, 21, and 28, and Article XVII, Section 1 of the Texas Constitution, rendered July 31, 2026, with Article III, Sections 2 and 5, and Article V, Sections 11 and 28, confirmed in the stored text for this ledger on October 7, 2026; on Government Code Sections 22.004, 22.110, 72.083, and 301.001, rendered October 1, 2026, with Sections 22.004 and 301.001 confirmed in the stored text on October 7, 2026; on Penal Code Section 39.03, rendered April 10, 2026; on Civil Practice and Remedies Code Section 129C.002, rendered May 14, 2026; on Business and Commerce Code Section 17.50; on Texas Rule of Civil Procedure 296; on Sections 7, 9, and 10 of H.B. 3284 in the enrolled text; on Arkansas Code Section 9-13-101, read through a secondary reproduction; and on 42 U.S.C. Sections 602(a)(2), 609(a)(8), 666, 1315(b), and 5106a(b)(2) and (b)(3), 18 U.S.C. Sections 922(g)(8) and 2265, 25 U.S.C. Sections 1903(1) and 1912(e), 28 U.S.C. Section 1738A, 34 U.S.C. Section 12291(b)(2), and 45 C.F.R. Sections 302.56, 303.101, and 1356.21, as read for the chapters and the research record noted above.

A.14 Chapter 13. The Strongest Objections

Chapter 13 restates the sources of the earlier chapters against the objections they meet and adds the sources listed first below, which answer four objections the earlier chapters do not reach.

Source	Where relied on
Huber and Gordon (2004); Berdejó and Yuchtman (2013); Gordon and Huber (2007); Canes-Wrone, Clark and Kelly (2014); Shepherd (2009); Dippel and Poyker (2019); Kritzer (2016)	13.3.7

Source	Where relied on
Tex. Const. art. V, § 7(b); Tex. Fam. Code § 201.101(b)	13.3.7
Amato and Booth (1997); Brown (2001)	13.4.3
Tex. Code Crim. Proc. arts. 26.13(e), 38.071, 38.072; Maryland v. Craig, 497 U.S. 836 (1990)	13.8.5
Kennedy v. Bremerton School District (2022); Harris v. McRae (1980); McGowan v. Maryland (1961)	13.10
Forslund et al. (2022)	13.2.1; 13.2.2
Verhage et al. (2016)	13.2.1
Ackerman and Brey Pritzl (2011); Bow, Gould, Flens and Greenhut (2006)	13.2.1
Main, Hesse and Hesse (2011)	13.2.1
Thompson, Simpson and Berlin (2022)	13.2.1
Solomon and George (1999); McIntosh, Smyth and Kelaher (2013); Pruett, McIntosh and Kelly (2014)	13.2.2
Tornello et al. (2013)	13.2.2
McIntosh, Smyth, Kelaher, Wells and Long (2010)	13.2.2; 13.5.2
van IJzendoorn et al. (2004)	13.2.2
Emery (2021); Warshak (2014)	13.2.2
Altenhofen (2008)	13.2.2
Fabricius and Suh (2016)	13.2.2
McLanahan, Tach and Schneider (2013); Markowitz and Ryan (2016)	13.2.3
Harper and McLanahan (1999)	13.2.3
Zeanah et al. (2009); Bernard et al. (2012); Cicchetti, Rogosch and Toth (2006)	13.2.3
Canessa et al. (2026)	13.2.4; 13.5.1; 13.5.2
In re C.J.C.; In re Derzapf; In re K.N.; In re H.S.	13.3.1; 13.3.2
Holick v. Smith	13.3.2
Santosky v. Kramer	13.3.2
Rivera v. Minnich	13.3.2
Webster v. Commission for Lawyer Discipline; Meshell v. State; State v. Stephens	13.3.3; 13.3.4
Office of the Attorney General v. C.W.H.	13.3.5
Children's Bureau, Child and Family Services Reviews: Texas Final Report 2024	13.3.6
Stevenson and Wolfers (2006)	13.4.1
Gruber (2004)	13.4.1

Source	Where relied on
Boddie v. Connecticut	13.4.2
Halla (2015)	13.5.1
Archer (2000)	13.5.1
Chen et al. (2023)	13.5.1
Augustijn (2021); Langmeyer et al. (2022)	13.5.2
Texas Conservative Coalition Research Institute, staff paper “Texas Family Courts”	13.5.2
Doyle and Peters (2007)	13.6.1
Bald, Doyle, Gross and Jacob (2022)	13.6.1; 13.7.1
Legislative Budget Board, Financing the Judiciary in Texas (ID 9394), page 20	13.6.1
Office of the Attorney General, Legislative Appropriations Request for fiscal years 2028 and 2029	13.6.3
Hodges, Meyer and Cancian (2019)	13.6.3
Gross and Baron (2022)	13.7.1
Baron and Gross (2025)	13.7.1
Bald, Chyn, Hastings and Machelett (2022)	13.7.1
Doyle (2007), American Economic Review	13.7.1
Helénsdotter (in press)	13.7.1
Mireles v. Waco; Howlett v. Rose; Ferri v. Ackerman	13.8.1
Delcourt v. Silverman	13.8.1
California A.B. 2475, Assembly Appropriations Committee analysis (May 18, 2010)	13.8.2
Trocmé and Bala (2005)	13.8.3
Legislative Budget Board fiscal notes cited in Section 12.6	13.8.4
Office of Court Administration, District Courts Activity Detail, fiscal year 2025	13.8.4

The statutes and rules cited in this chapter are the same sections read for the chapters to which it refers, in the renderings stated there: the Family Code as rendered December 13, 2025; the Texas Constitution as rendered July 31, 2026; the Government Code as rendered October 1, 2026; the Texas Rules of Appellate Procedure in the file dated February 6, 2026; the Business and Commerce Code as stored; and the federal statutes and regulations in the editions stated for Chapters 5, 7, 8, and 12.

A.15 Limits of This Report

Source	Where relied on
Office of the Attorney General, Handbook for	Custody outcomes in Texas are not publicly

Source	Where relied on
Noncustodial Parents	recorded
Investigator-assignment studies of foster care (Doyle, 2007, 2008; Gross and Baron, 2022; Baron and Gross, 2025; Bald, Chyn, Hastings and Machelett, 2022) and Helénsdotter (in press)	The causal evidence on foster care points in both directions
Canessa et al. (2026)	The Swedish random-judge study is an unpublished working paper
Overnight-care studies and consensus statements of Chapter 2	The evidence on overnight care for young children is contested
Washington State Institute for Public Policy, Benefit-Cost Results; Legislative Budget Board fiscal notes	The report does not compute fiscal notes

This section relies on Government Code Section 72.083(b), rendered October 1, 2026, and on 45 C.F.R. Sections 302.56 and 1356.21 and 42 U.S.C. Sections 602(a)(2), 609(a)(8), 666(a)(9), and 672(a)(2)(A), in the editions stated for Chapters 5, 7, and 8. # Appendix B. References

This list contains every source cited in the chapters of the report. Research, data, agency reports, and party documents appear in Section B.1 in the style of the American Psychological Association, seventh edition; cases appear in Section B.2; and constitutions, statutes, regulations, rules, bills, and legislative records appear in Section B.3. Each entry gives the bibliographic elements held in the research record. Where the record does not hold an element, such as an author's initials, an article title, a volume, or a page range, the entry omits it rather than supply it from memory, and in a few cases a short parenthetical identifies the work instead. How far each source was read is stated in Appendix A.

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B.2 Cases

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B.3 Constitutions, statutes, regulations, and rules

B.3.1 United States Constitution and federal statutes

U.S. Const. amends. I, VIII, XIV.

18 U.S.C. §§ 228, 922(g)(8), 2265 (2024 ed.).

25 U.S.C. §§ 1903(1), 1912(b), (d), (e), (f), 1921 (2024 ed.).

28 U.S.C. § 1738A (2024 ed.).

34 U.S.C. § 12291(b)(2).

42 U.S.C. §§ 602(a)(2), 609(a)(8), 655, 658a, 666, 671(a)(15), 672(a)(2)(A), 675(5)(C), (E), (F), 1315(b)(1), 1983, 1988(b), 5106a(b)(2), (b)(3), 19403(a) (2024 ed.).

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Speak Out Act, Pub. L. No. 117-224, 136 Stat. 2290 (2022) (codified at 42 U.S.C. §§ 19401 to 19404).

B.3.2 Federal regulations

45 C.F.R. §§ 302.56, 302.70(a)(5), 303.100(b), (c), 303.101, 303.106, 305.2, 305.31 (eCFR, current to Oct. 1, 2026).

45 C.F.R. § 1356.21(b), (c), (d) (eCFR, current to Oct. 2, 2026).

B.3.3 Federal legislative records

S. Rep. No. 103-138 (1993).

Violence Against Women: Hearing Before the S. Comm. on the Judiciary, S. Hrg. 103-726 (1993) (statement of John Nelson, M.D., Deputy Director, Utah Department of Health).

B.3.4 Texas Constitution

Tex. Const. art. I, §§ 13, 15, 16, 18, 19, 37 (§ 37 added Nov. 4, 2025).

Tex. Const. art. II, § 1.

Tex. Const. art. III, §§ 2, 5.

Tex. Const. art. V, § 1-a (as amended Nov. 4, 2025), §§ 7, 11, 21, 28.

Tex. Const. art. XVI, § 1.

Tex. Const. art. XVII, § 1.

Texas Constitution text as rendered by the Legislature, July 31, 2026.

B.3.5 Texas codes

Tex. Bus. & Com. Code § 17.50.

Tex. Civ. Prac. & Rem. Code §§ 41.003, 41.008, 101.001, 101.021, 101.025, 101.053, 101.057, 129C.001, 129C.002 (text rendered May 14, 2026).

Tex. Code Crim. Proc. arts. 26.13, 38.071, 38.072 (text rendered Apr. 9, 2026).

Tex. Elec. Code § 273.021 (as held unconstitutional in State v. Stephens).

Tex. Fam. Code §§ 6.001 to 6.008, 6.502, 6.504, 6.507, 6.702, 6.711, 7.001 (text rendered Dec. 13, 2025, used for every Family Code citation below).

Tex. Fam. Code §§ 54.08, 71.004, 82.009, 83.001, 83.0025, 83.002, 83.003, 83.004, 83.006, 84.001, 85.001, 85.022, 85.025.

Tex. Fam. Code ch. 101 and § 101.007.

Tex. Fam. Code §§ 105.001, 105.002, 105.003, 105.005, 105.006, 106.002, 107.009, 107.023, 107.101, 107.104, 107.106, 107.107, 107.108, 107.109, 107.110, 107.111, 107.112, 107.114, 107.115, 109.001.

Tex. Fam. Code §§ 151.001, 152.102, 152.201, 152.202, 152.208.

Tex. Fam. Code §§ 153.001, 153.002, 153.004, 153.0071, 153.010, 153.013, 153.072, 153.131, 153.134, 153.135, 153.191, 153.251, 153.252, 153.254, 153.255, 153.256, 153.258, 153.312, 153.313, 153.314, 153.317, 153.3171, 153.432, 153.433, 153.501, 153.502.

Tex. Fam. Code §§ 154.009, 154.122, 154.125, 154.130, 154.131, 156.006, 156.101, 156.102.

Tex. Fam. Code §§ 157.001, 157.006, 157.008, 157.161, 157.163, 157.166, 157.167, 157.261,

157.265.

Tex. Fam. Code §§ 160.302, 160.305, 160.307, 160.308, 160.502, 160.607, 160.608, 160.636, 161.001, 161.005, 161.206.

Tex. Fam. Code §§ 201.001, 201.004, 201.005, 201.007, 201.009, 201.012, 201.013, 201.015, 201.016, 201.017, 201.101, 201.102, 201.104, 201.1041, 201.1042, 201.1045, 201.105, 201.107, 201.110.

Tex. Fam. Code §§ 231.001, 231.002, 232.003, 232.008.

Tex. Fam. Code §§ 261.001, 261.101, 261.106, 261.107, 261.109, 261.201, 262.101, 262.102, 262.104, 262.106, 262.107, 262.201, 263.201, 263.304, 263.306, 263.307, 263.401.

Tex. Gov't Code §§ 21.002, 22.004, 22.110, 33.001 (as amended 2025), 33.006, 52.046, 71.035, 72.083, 301.001, 552.001, 552.003, 552.0035 (text rendered Oct. 1, 2026).

Tex. Gov't Code ch. 54 (judicial immunity of masters and magistrates).

Tex. Penal Code §§ 21.02, 22.04, 25.03, 25.05, 32.45, 32.47, 36.05, 36.06, 37.02, 37.03, 37.09, 38.05, 39.02, 39.03, 46.04 (text rendered Apr. 10, 2026).

B.3.6 Texas session laws, bills, and legislative records

Act of May 2025, 89th Leg., R.S. (H.B. 3284) (Texas Commission on Marriage and Family), §§ 2, 3, 4, 7, 9, 10 (enrolled text).

Acts 2025, 89th Leg., R.S., ch. 593 (H.B. 2524) (amending Tex. Fam. Code §§ 105.001, 106.002, 107.023, 109.001, 152.208, 160.636, 261.107).

Acts 2025, 89th Leg., R.S. (H.B. 2340) (adding Tex. Fam. Code §§ 107.104(f), 107.114(a-1)).

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Acts 2025, 89th Leg., R.S. (S.B. 835) (adding Tex. Civ. Prac. & Rem. Code ch. 129C).

Acts 2025, 89th Leg., R.S. (S.B. 2052) (amending Tex. Fam. Code § 153.002).

Acts 2023, 88th Leg., R.S. (H.B. 4062) (adding Tex. Fam. Code § 107.112(b-1)).

Acts 2017, 85th Leg., R.S. (H.B. 1501) (amending Tex. Fam. Code § 107.009).

Acts 2013, 83rd Leg., R.S., ch. 227 (amending Tex. Fam. Code § 161.005).

Tex. H.B. 2927, 80th Leg., R.S. (2007); Tex. H.B. 1229, 82nd Leg., R.S. (2011); Tex. H.B. 2363, 84th Leg., R.S. (2015); Tex. H.B. 2157, 86th Leg., R.S. (2019); Tex. H.B. 803, 87th Leg., R.S. (2021) (equal-parenting bills), with the Legislative Budget Board fiscal notes on each.

Tex. H.B. 922 and H.B. 3414, 86th Leg., R.S. (2019).

Tex. H.B. 867 and H.B. 4381, 87th Leg., R.S. (2021).

Tex. H.B. 3379, 88th Leg., R.S. (2023) (as filed); Tex. S.B. 1702, 88th Leg., R.S. (2023); Tex. S.B. 849, 89th Leg., R.S. (2025).

Tex. H.B. 1546, 88th Leg., R.S. (2023), and Tex. H.B. 2524, 89th Leg., R.S. (2025), House committee bill analyses.

Tex. H.B. 969, 1546, 2581, 2583, 2658, 2969, 3380, 4355, and 5103, 88th Leg., R.S. (2023) (bills heard April 19, 2023); Tex. H.B. 1807 and H.B. 3145 (bills supported by the Texas Family Law Foundation in the sessions read).

Tex. H.B. 3297, 85th Leg., R.S. (2017), Legislative Budget Board fiscal note.

Tex. H.B. 1640, 82nd Leg., R.S. (2011); Tex. H.B. 183, 83rd Leg., R.S. (2013); Tex. H.B. 563, 84th Leg., R.S. (2015); Tex. H.B. 1642, 87th Leg., R.S. (2021) (bills to amend Tex. Penal Code § 39.03).

Tex. S.B. 2501 and S.B. 1838, 89th Leg., R.S. (2025) (vetoed June 22, 2025), Legislative Budget Board fiscal notes and bill histories.

Tex. H.B. 4139 and S.B. 1538, 89th Leg., R.S. (2025), Legislative Budget Board fiscal notes.

Legislative Budget Board, fiscal notes on the 2025 judicial-conduct legislation and the 2025 judicial-conduct constitutional amendment, 89th Leg., R.S. (Mar. 4 to May 29, 2025).

Tex. S. Comm. on State Affairs, Notice of Public Hearing, Minutes, and Witness List, 89th Leg., Interim (Sept. 14, 2026; Sept. 15, 2026).

Tex. S. Comm. on State Affairs, Interim Charges, Protecting Texas Families and Protecting the Integrity of the Judiciary (2026).

Tex. H. Comm. on Juvenile Justice & Family Issues, Witness Lists, 86th Leg., R.S. (Apr. 24 and May 1, 2019); 87th Leg., R.S. (2021); 88th Leg., R.S. (Apr. 19, 2023).

Tex. H. Comm. on Juvenile Justice & Family Issues, Notice of Public Hearing, 88th Leg., Interim (Aug. 26, 2024).

B.3.7 Texas rules

Tex. R. Civ. P. 11, 76a, 296, 297, 299, 299a.

Tex. R. App. P. 13.1, 28.4, 52.7, 52.8 (file dated Feb. 6, 2026).

Tex. R. Jud. Admin. 6.1, 6.2, 12.1, 12.2, 12.5, 12.6, 12.9 (file dated July 1, 2026).

Tex. R. Jud. Educ. 2(a), 2(c), 4(b), 8(a), 12(g)(5)(i), 12(h)(4)(iii) (Tex. Crim. App., updated Aug. 18, 2025).

Tex. Code Jud. Conduct, Canons 3D(1), 3D(2), 4A(1), 4B(1), 4D(4)(a), 4D(4)(c) (as amended through June 12, 2026).

Tex. Disciplinary Rules Prof'l Conduct R. 1.05, 3.03, 8.03 (effective Mar. 7, 2025).

B.3.8 Other States' statutes and bills

Ariz. Rev. Stat. Ann. § 25-403.02(B), (E).

Ark. Code Ann. § 9-13-101(a)(1)(A)(iv), (a)(5) (as amended by Act 604 of 2021).

Fla. Stat. § 61.13(2)(c) (2025) (as amended by ch. 2023-301, Laws of Fla. (CS/HB 1301)).

Ky. Rev. Stat. Ann. §§ 403.270(2), 403.280, 403.315 (as amended by 2018 Ky. Acts ch. 198 (H.B. 528) and 2026 Ky. Acts ch. 92 (S.B. 122)).

Mo. Rev. Stat. § 452.375 (as amended by S.S. for S.B. 35, 102d Gen. Assemb., 1st Reg. Sess. (2023)).

W. Va. Code § 48-9-102a (2022 W. Va. Acts, Enr. Comm. Sub. for S.B. 463).

Cal. A.B. 2475, 2009 to 2010 Reg. Sess. (as amended May 11, 2010); Assembly Committee on Appropriations, Bill Analysis (May 18, 2010). # Appendix C. The First Group of Bills in Summary

This appendix summarizes the drafting specifications for the first group of bills described in Chapter 12. The full specifications are published separately as a companion document, Drafting Specifications for the First Group of Model Bills, which states for each bill the problem it answers, the change made to each section in words, the definitions it needs, its transition and effective date, its constitutional basis and the challenge it should expect, the federal conditions it must meet, and the method by which its fiscal note should be built. Neither this appendix nor the companion contains bill text; the drafting belongs to the Texas Legislative Council. Every bill amends or adds named sections of the existing Code and keeps their numbers, as Section 12.2 explains, so that a judge, a lawyer, and a parent can find each change where the old rule was.

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
Divorce grounds	Fam. Code §§ 6.001 and 6.006 repealed; § 6.002 kept; a new fault ground added to Chapter 6, Subchapter A	Repeals both fault-free grounds, keeps cruelty, and adds a ground for family violence or abuse of a child with a mandatory referral of the conduct to the prosecuting attorney, for suits filed after the effective date. A measured review of the effect on children and on dissolution is required	Gruber (2004); Stevenson and Wolfers (2006) as the strongest contrary evidence; Chapter 3, Sections 3.10 and 3.11; Section 12.3.1	H.B. 3284, § 7(3)(B)(ii) (reduce the incidence of divorce and family dissolution) and § 7(1)	None identified in Section 12.5; the fallback-only bar (if repeal fails) on public money for the filer’s counsel and services must be checked against any federal grant that pays for them

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		after four years; the report predicts nothing about divorce rates. Fallback only (if repeal fails): strips the no-fault filer's advantages.			
Equal parenting	Fam. Code § 153.252 replaced; §§ 153.254 and 105.001(g) amended; § 153.135 conformed; § 153.004 left unchanged	Presumes that equal or substantially equal possession by each fit parent is in the child's best interest. The presumption allocates the burden of proof and does not displace the best-interest standard, which remains the primary consideration, and it is rebuttable only by clear and convincing evidence stated in written findings of the	Chapter 2 (shared parenting, overnights, the Swedish working paper); Chapter 3, Sections 3.4, 3.5, and 3.9; Section 12.3.2	Senate charge, Protecting Texas Families ("fair and consistent procedures"; "truly prioritize the best interests of children"); H.B. 3284, § 7(3)(B)(i)	Title IV-D guideline rule (45 C.F.R. § 302.56) for any parenting-time adjustment to support; UCCJEA and the PKPA (28 U.S.C. § 1738A) for enforcement in other States

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		specific facts relied on, on the model of § 153.002(c). A fit parent is one who has not been found, on those findings, to endanger the child's physical or emotional welfare and who is willing and able to exercise possession; § 153.004 family-violence findings displace the presumption. For a child under twelve months the court orders a stepped schedule of increasing frequency and duration of possession by each fit parent, moving toward equal time by the child's			

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		second year, adjusted only on findings specific to the child, the same whichever parent has been the primary caregiver.			
Temporary orders	Fam. Code §§ 105.001, 6.507, and 109.001(c) amended, on the model of § 109.001(b-5)	Fallback only (if repeal fails): ends temporary orders on conservatorship and possession in suits filed on a no-fault ground. In every other suit it requires written findings for any departure from the equal-parenting presumption and an accelerated appeal, with no automatic stay, of orders that change conservatorshi	In re Derzapf, 219 S.W.3d 327 (Tex. 2007); Chapter 4, Sections 4.2 to 4.4; Section 12.3.3	Senate charge (“unpredictable timelines”)	None identified; protective orders, emergency removal, and Title IV-D temporary support orders are outside the bill and must stay so

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		p, restrict possession, access, or speech, or award fees.			
Findings and recording	Fam. Code §§ 153.258(a), 105.003, and 201.009(a) amended; a findings section added to Chapter 105	Requires written findings of the specific facts relied on, without request, in every ruling that designates a conservator, sets or varies possession, restricts a parent's time or rights, or awards fees against a parent, in a contested case and wherever a party appears without counsel; in an agreed order with all parties represented, the parties' agreement and a best-interest statement	Chapter 4, Sections 4.7 and 4.8; Chapter 11, Sections 11.2 and 11.3; Section 12.3.4	Senate charge ("fair and consistent procedures"); H.B. 3284, § 7(3)(A)	CAPTA leaves public access to court proceedings to the State (42 U.S.C. § 5106a(b)(2)); VAWA nondisclosure of victim information (34 U.S.C. § 12291(b)(2))

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		suffice; failure is remedied by remand for findings (authority: Tex. Gov’t Code § 22.004). Requires audio and video recording of every hearing, phased by court size, audio only where no child is present, held by the clerk and closed to public release of any image of a child, with a fiscal note before the effective date.			
Associate judges	Fam. Code §§ 201.005, 201.015, 201.101(d), 201.1041, and 201.1042 amended	Reserves contested conservatorship and possession to the elected judge unless every party consents in writing, ends automatic referral of conservatorshi	Office of the Att’y Gen. v. C.W.H., 531 S.W.3d 178 (Tex. 2017); Chapter 4, Sections 4.5 and 4.6; Section 12.3.5	Senate charge (“unnecessary delays”; “fair and consistent procedures”)	Title IV-D expedited-process timeframes (45 C.F.R. § 303.101); Title IV-E judicial findings kept on time (45 C.F.R. § 1356.21)

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		p attached to a support motion, lengthens the three-working-day de novo window to weeks, and requires a record, effective twenty-four months after enactment.			
Standard Protocol Evaluation	Fam. Code Chapter 107, Subchapter D: §§ 107.104, 107.107, 107.108, and 107.109 amended; Standard Protocol sections added	Replaces the open-ended evaluation in contested suits with a fixed battery stated by criteria, scored blind by reliability-certified coders, with random assignment from a state pool, recording, raw-data review, a qualification gate stated as competencies (measurement and research methods, child	Chapter 2 (the instruments); Chapter 6, Section 6.1; Forslund et al. (2022) recorded as the contrary position; Section 12.3.6	Senate charge (“repetitive child evaluations”)	None identified; the author’s commercial interest is disclosed in the Statement of Interest and in Section 12.3.6, and the statutory bar applies to him

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		development, and the instrument's published reliability standard), with equivalent degrees accepted and current evaluators grandfathered for the sunset period; a twenty-four-month sunset after which no court admits an evaluation by a person who does not meet the gate; a statutory bar on any person who sells training, coding, scoring, or administration services for an approved instrument, or holds a financial interest in one, serving as appointee,			

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		vendor, or pool administrator; a published count of certified coders; and a good-cause finding before any successive evaluation. The evaluation is an input to the court's findings and may take the form of a descriptive report; only an ultimate custody recommendation is barred.			
Abuse allegations to criminal court	A new subchapter in Fam. Code Title 5; §§ 153.013 and 261.107 amended; Code of Criminal Procedure provisions on expedited trial and child witnesses	Refers any allegation of a felony that endangers a child, raised in a custody suit, for investigation on a fast track to the criminal district court, with an expedited trial on the accused's	Chapter 6, Section 6.2; Trocmé and Bala (2005); Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987); Section 12.3.7	Senate charge ("fair and consistent procedures"; "truly prioritize the best interests of children")	CAPTA good-faith reporter immunity (42 U.S.C. § 5106a(b)(2)(B)(vii), (b)(3)); Tex. Const. art. V, § 21 for the prosecutor's role

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		demand and child-witness protections; keeps emergency safety orders available first, on a corroborated showing of imminent danger, for no more than fourteen days without a hearing with findings and followed by a final hearing; stays or expedites custody merits rather than deciding them on a bare allegation; places a duty on the prosecuting attorney, on a magistrate's finding of probable cause for a specified offense against a child, to present the			

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		matter to a grand jury within 60 days or file written reasons with the district judge (no command to prosecute, no dismissal penalty); and adds a mirror penalty for a convicted knowing false report with the same good-faith immunity that exists now and charging by a prosecutor only.			
Plea failsafe (a plea is not a finding)	A new section in Fam. Code Title 5 on the civil effect of pleas; Code of Criminal Procedure art. 26.13 (admonishments) amended	No plea, deferred adjudication, plea agreement, stipulation, agreed order, or default is evidence of or a basis for a finding of abuse, neglect, endangerment, or unfitness or for any	Section 13.8.5; Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987); Santosky v. Kramer, 455 U.S. 745 (1982)	Senate charge, Protecting Texas Families ("fair and consistent procedures"; "truly prioritize the best interests of children")	None identified; Tex. Const. art. V, § 21 (the prosecutor's function) is left intact

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		reduction of a parent's possession, access, or conservatorship; a reduction on alleged criminal conduct rests only on a jury's finding (a conviction by jury verdict or a unanimous jury finding in the family case by clear and convincing evidence); a term on possession, access, or conservatorship cannot be bargained for in a plea and is void; the court admonishes a parent in plain language and in writing, counsel certifies the advice, and a misstatement of the family-court effect of a plea is a			

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		ground to withdraw it; an order reducing time on the basis of a plea is voidable at any time; a judge who pressures a plea by reference to its family-court consequences is subject to referral to the State Commission on Judicial Conduct; emergency safety orders remain for no more than fourteen days without a hearing with findings. It regulates the civil effect of pleas and does not limit charging, bargaining, or the prosecutor's exclusive function.			
Ex parte	Fam. Code	Keeps the ex	Holt et	Senate charge	Full faith and

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
orders	Chapter 83 (§§ 83.001, 83.002) and Chapter 85 (§ 85.001) amended	parte order and, where a custody suit is pending, requires the full adversary hearing within a short fixed period or ends the order's effect on possession, requires written findings at that hearing, and requires county reporting of grants, outcomes, and pending suits.	al. (2002); Chapter 6, Section 6.3; Section 12.3.8	("unpredictable timelines")	credit (18 U.S.C. § 2265(b)); federal firearm disability (18 U.S.C. § 922(g)(8)(A)); United States v. Rahimi, 602 U.S. 680 (2024)
Child support package	Fam. Code §§ 160.305(a), 161.005, 154.009, 154.131, 160.636(g), and 157.265; Chapters 154 and 157; § 232.008(a)	Requires genetic confirmation of parentage before support, with adoption excepted; ends retroactive support and interest; sets a threshold of 200 percent of the federal poverty level for receiving	Chapter 5; Chapter 7, Sections 7.2 to 7.9; Section 12.3.9	H.B. 3284, § 7(1)	42 U.S.C. §§ 602(a)(2), 609(a)(8)(B), 666(a) and (d), and 1315; 45 C.F.R. §§ 302.56, 302.70(a)(5)(vii), and 303.100; Tex. Const. art. I, § 16

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		support and a self-support reserve of 250 percent of that level for paying; resets nonconforming orders; terminates arrears (in conflict with 42 U.S.C. § 666(a)(9) and Tex. Const. art. I, § 16 unless waived, and so a waiver request under 42 U.S.C. § 1315); limits enforcement to an annual credit report; forbids contempt or confinement for arrears.			
CPS audit, transition, and removal standard	Fam. Code § 262.201(g) amended; an independent audit of the Department's child protective services division and a transition plan	Raises the proof at the full adversary hearing to clear and convincing evidence, requires the court to name the efforts it found	Chapter 8; Children's Bureau, Texas Child and Family Services Review Final Report (2024); 25 U.S.C. § 1912(e) as the model; Section	H.B. 3284, § 7(2)(B)	Title IV-E (42 U.S.C. §§ 672(a)(2)(A)(ii) and 675(5)(C), (E); 45 C.F.R. § 1356.21); ICWA; CAPTA

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
	fixed by statute; vehicle: the Department's Sunset bill	reasonable, and provides an independent, phased audit of the division followed by a transition plan fixed by statute, region by region, with recording of interviews and hearings and 21-year retention of children's recordings, spending reported against outcomes, and aggregate counts; any board excludes only a person with a financial stake in placements or fees; existing law governs any criminal referral. The higher removal standard trades off marginal	12.3.10		

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		children, as the removal research shows.			
Accountability offenses and civil action	A new Penal Code chapter; Fam. Code § 107.009 amended; a new civil chapter modeled on Bus. & Com. Code § 17.50(b), (c)	Creates an offense defined by conduct, not by rulings: a knowingly false statement in an official record, concealing or destroying a record or recording, acting outside jurisdiction, retaliating for a report, knowingly obstructing court-ordered possession, or coercing or procuring a plea by misstating its family-court consequences. It reaches judges and appointees for that conduct, expressly excludes a	Chapter 10, Sections 10.3 to 10.5 and 10.11; Ferri v. Ackerman, 444 U.S. 193 (1979); Taylor v. Tolbert, No. 20-0727 (Tex. May 6, 2022); Section 12.3.11	Senate charge, Protecting Texas Families (“truly prioritize the best interests of children”); H.B. 3284, § 7(3)(A)	Federal defenses to 42 U.S.C. § 1983 claims are untouched; federal firearm law turns on elements, not state labels

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		good-faith ruling within jurisdiction, and has no prior-finding gate. Adds a Texas civil action against appointees and administrative functions under the § 107.009(b) states of mind that names the immunities that do not apply; it proposes no liability for judicial rulings, and the separation-of-powers question for judges is flagged as unresolved.			
Nondisclosure agreements	Civ. Prac. & Rem. Code §§ 129C.001 and 129C.002 amended; a new felony offense	Extends the rule voiding silence clauses from sexual abuse to physical abuse and neglect of a child, and makes it a	Chapter 10, Section 10.10; Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949); Section 12.3.12	Senate charge, Protecting Texas Families (“truly prioritize the best interests of children”); H.B. 3284, § 7(3)(A)	The federal Speak Out Act (42 U.S.C. § 19403) is narrower and does not conflict; First Amendment limits govern

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
		felony knowingly to offer or accept a benefit for silence about child abuse with intent to prevent a report.			the drafting
Judicial education standard	Gov’t Code § 22.110 amended; amendments to the Rules of Judicial Education requested of the Court of Criminal Appeals	Requires every family-law program that counts for judicial credit to file its agenda, presenters, presenters’ ties, and materials before the program, makes the filings public, and requires mandated topics to be taught from sources graded by a published standard, for every sponsor alike.	Chapter 9, Sections 9.8 to 9.10; Section 12.3.13	Senate charge, Protecting the Integrity of the Judiciary	None identified
Data and transparency	Gov’t Code §§ 71.035 and 72.083 amended; a publication	Requires the Office of Court Administration to collect, for every final	Chapter 11, Section 11.4; Chapter 5, Section 5.12; Section	H.B. 3284, § 7(1)	VAWA (34 U.S.C. § 12291(b)(2)); CAPTA confidentiality;

Bill (short title)	Code sections amended or added	What it does	Evidence and chapter	H.B. 3284 duty or Senate charge it answers	Federal constraint to check
	section added	order in a suit affecting the parent-child relationship, the conservatorship designation, schedule, agreed or contested status, who sought primary residence, any family-violence finding, and the sex of each parent, and to publish court-level aggregates each year, with ex parte, appointee-payment, and federal-funds reporting.	12.3.14		Fam. Code § 261.201

Sources: Chapter 12 and the chapters named in each row; Tex. Fam. Code text rendered Dec. 13, 2025; H.B. 3284, 89th Leg., R.S. (2025), § 7; Senate Committee on State Affairs interim charges heard Sept. 14 and 15, 2026.

Up to four joint resolutions are proposed, two of them as insurance and not as requirements. Each must be approved by two-thirds of all the members elected to each house, which is 21 senators and 100 representatives, and takes effect only if a majority of the votes cast at the election the Legislature specifies favor it (Tex. Const. art. XVII, § 1(a), (c)). Each enabling bill should carry a clause making it effective only if its amendment is adopted.

Joint resolution	Texas Constitution	What the amendment does	Why a statute is not enough
Prosecution of referred child-abuse cases	Art. V, § 21	Insurance, not a requirement: authorizes presentation of a case in which a magistrate has found probable cause of a specified offense against a child by a prosecutor other than the local one, should the statutory duty to present within 60 days or file written reasons be held to abridge the prosecutor's function	The Legislature may not remove or abridge the prosecutor's exclusive function without an express constitutional provision (Meshell)
Judicial selection and conduct	Art. V, §§ 1-a, 11, and 28	Reserves contested family matters to elected judges, ends gubernatorial appointment to judicial office, and moves the State Commission on Judicial Conduct further toward elected and civilian membership with blind review, building on art. V, § 1-a as amended Nov. 4, 2025	The appointment power and the Commission's composition are fixed in the Constitution
Confinement for unpaid support	Art. I, § 18	Adds failure to pay child support, or any sum arising from it, to the bar on imprisonment for debt	Support is "not considered a 'debt' within Article I, section 18, but a legal duty" (Ex parte Hall, 854 S.W.2d 656, 658 (Tex. 1993), as quoted in later opinions), and courts may treat

Joint resolution	Texas Constitution	What the amendment does	Why a statute is not enough
			contempt as an inherent power
Article I, Section 37	Art. I, § 37	Would supply a standard of review, a standard of proof, and a remedy for the parental right	A statute can give the section operational content, and the bills above do so; this amendment is a later option, not a first-session need

Source: Section 12.4; Tex. Const. art. XVII, § 1 (text rendered July 31, 2026).