

- SUBJECT:** Excluding certain evidence from use in child abuse and neglect cases
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu
0 nays
- WITNESSES:** For —Judy Powell, Parent Guidance Center; Julia Hatcher, Texas Association of Family Defense Attorneys; Jeremy Newman, Texas Home School Coalition; Cecilia Wood; (*Registered, but did not testify:* Andrew Brown, Texas Public Policy Foundation; Jackie Schlegel)

Against — None

On — (*Registered, but did not testify:* Marta Talbert, Department of Family and Protective Services)
- BACKGROUND:** Family Code sec. 261.001(4) defines neglect for the purposes of investigations based on reports of child abuse or neglect as including certain specified behaviors and excluding certain other specified behaviors of the person responsible for a child's care, custody, or welfare.

Family Code sec. 161.001 establishes the grounds under which a court may terminate the parent-child relationship and contains provisions prohibiting a court from terminating the parent-child relationship based on evidence of certain behaviors and categorizations of the parent.

Family Code sec. 262.116 prohibits the Department of Family and Protective Services (DFPS) from taking possession of a child based on evidence of certain behaviors or categorizations of a parent.
- DIGEST:** HB 2536 would prohibit a court from ordering the involuntary termination of the parent-child relationship based on evidence that the parent sought an opinion from more than one medical provider relating to the child's

medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility. The Department of State Health Services also could not take possession of a child based on evidence that the parent took one of these actions.

The bill would exclude a decision by a person responsible for a child's care, custody, or welfare to take any of the above actions from behavior that would constitute neglect of a child under current law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**SUPPORTERS
SAY:**

HB 2536 would help ensure that families with medically fragile children were protected from unnecessary removal of their child by establishing that certain actions commonly taken on legitimate grounds, including seeking a second medical opinion or transferring a child to a different medical provider or facility, could not be used as evidence of child abuse or neglect in proceedings against the parent. Concerns have been raised that these legitimate actions taken by parents of medically fragile children could be misinterpreted as evidence of child abuse or neglect, which can result in involuntary termination of the parent-child relationship or the Department of Family and Protective Services (DFPS) taking possession of a child.

In a recent case a medically fragile child was taken from the child's family for more than five months due to a report from a doctor who had not treated the child in the past, interacted with the parents, nor read the child's full report. Doctors' opinions are typically given significant weight and met with acceptance by DFPS case workers and courts, even if the doctors did not personally examine the child on whom they make a report, which can result in children being wrongfully taken from their homes. These cases are painful and often expensive for the parents and can leave children confused and traumatized. HB 2536 would enable parents to feel safe in seeking second medical opinions or deciding to transfer their child's medical care to a new provider or different facility despite the

weight that comes with a doctor's opinion or report.

HB 2536 would protect the right of families to make appropriate decisions for the care of their medically fragile children and for the stability of their families, while also ensuring that the well-being of the child was not at risk. There are cases that warrant the involuntary removal of a child from the child's parents, and the opinions of medical professionals in these cases are an important part of the process for weighing the safety of the child against the possibility of an unnecessary removal. The bill would not take away the discretion of doctors to make reports on child abuse or neglect. Rather, it would ensure that all parties involved could take the steps they believed were necessary to protect the interests of vulnerable children, whether those steps included a medical professional's report to DFPS or a parent's decision to seek a second medical opinion.

**CRITICS
SAY:**

HB 2536 could hinder the state's ability to protect vulnerable children by prohibiting the consideration of potentially relevant evidence in the cases of medically fragile children. In addition, the bill would prohibit the immediate removal of a child under certain circumstances when such removal could be warranted to ensure the child's safety.