

Summary: The Best Interest of the Child

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 The 0.47 standard deviation effect of joint custody comes from a working paper that is not yet peer reviewed (Grade A in design, pending peer review).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 (Fraleigh, 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
Temporary orders	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 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
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	Senate charge: repetitive child

Recommendation	What it does	Duty or charge it answers
	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	evaluations
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	Senate charge

Recommendation	What it does	Duty or charge it answers
Ex parte orders	it, taken in blocks of the parent's choosing within twenty-four months and enforced as possession; real, substantiated findings keep every protection Requires the adversary hearing within a short fixed period where a custody suit is pending, with findings and county reporting	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 charging, bargaining, or the prosecutor's exclusive function	Senate charge
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
Removal and CPS	support or interest, no confinement for arrears, each set against the federal conditions 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