

## **BILL ANALYSIS**

H.B. 1012  
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Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 2005, the 79th Legislature amended the Family Code to require parenting plans in child custody lawsuits and establish procedures for their use. Temporary and final orders in child custody lawsuits must include final parenting plans that establish the rights and duties of parents, minimize the child's exposure to harmful parental conflict, provide for the child's changing needs in a way that minimizes the need to modify the final parenting plan, and provide for dispute resolution procedures before court action, unless precluded or limited by previous binding arbitration.

Legislative findings have shown that conciliatory forms of dispute resolution promote the state's policy of assuring that children have continued contact with parents who may act in the best interest of the child, provide a safe, stable and nonviolent environment, and encourage parents to share rights and duties of raising the child after separation or divorce.

It is the policy of this state to encourage frequent and continuing contact between a child and each parent who has shown the ability to act in the best interest of the child; to provide a safe, stable, and nonviolent environment for 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.

The Family Code is amended to clarify the purpose and intent of the standard possession order. The times a possessory conservator may take possession of a child are amended to provide uniformity through out Chapter 153 of the Family Code.

Many experts in psychology believe that aside from the parent-child relationship, the sibling relationship is the most important in a child's development. Self-esteem, capacity for intimacy, trust, and the ability to adapt throughout adult life are all founded upon early childhood attachments. Studies show that those deprived of these attachments are disproportionately represented among the ranks of the unemployed, the mentally ill, drug abusers, and criminals.

During the 79th Legislature, House Bill 270 was passed to give an adult sibling standing to file suit for access to a child separated because of an action taken by the Department of Family and Protective Services. House Bill 1012 clarifies that an adult sibling may file a suit to access a child when the child was separated by an action taken by the Department of Family and Protective Services. Whether the appointment of a managing conservator is an issue in suit does not determine whether the sibling has standing. Also, House Bill 1012 repeals Section 153.552 of the Family Code. The repealed language is added to 153.551(c), if the court finds access is in the best interest of the child, the court must allow the sibling reasonable access to the child.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Section 102.0045(b) of the Family Code is amended to specify that a sibling's access to a child is governed by the standards established in Section 153.551 of the Family Code.

Section 153.133 of the Family Code is amended by adding Subsection (c). Subsection (c) requires the court to appoint parents as joint managing conservators, if both parents voluntarily

and knowingly agree in a written, parenting plan. The parenting plan must designate the parent who has exclusive right to designate the child's primary residence, and must specify the geographic area of the child's primary residence. The parenting plan must also specify the rights and duties of each parent regarding the child's physical care, support, and education; must include provisions to minimize disruption of the child's education, daily routine, and association with friends; must allocate between the parents, independently, jointly, or exclusively, all of the remaining rights and duties of a parent provided by Chapter 151; and the parenting plan must be in the best interest of the child. At the time the order is rendered, each parent must voluntarily and knowingly agree to the written, parenting plan.

Subchapter F, Chapter 153 of the Family Code is amended by adding Section 153.3101, which defines the word "school" in a standard possession order. "School" means the primary or secondary school in which the child is enrolled, or, if the child is not enrolled in school, then the public school district in which the child primarily resides.

Section 153.311 of the Family Code is amended, if parties do not mutually agree, in advance, to possession of a child, then the parties will have possession of the child under the specified terms set out in the standard possession order.

Section 153.312 and 153.313 of the Family Code are amended, the applicable period of possession begins at 6 p.m. on each applicable day. If the parents reside less than 100 miles apart, every Thursday, during the entire calendar year, the possessory conservator's right to possession of the child starts at 6 p.m. and ends at 8 p.m. Every weekend, during the entire calendar year, the possessory conservator's right to possession of a child begins at 6 p.m. on the first, third, and fifth Friday of each month. Right to possession ends at 6 p.m. on the following Sunday. Vacations and certain specific holidays supersede conflicting weekend or Thursday periods of possession, however, each period of possession begins and ends at 6 p.m. on each applicable day. If the parents reside more than 100 miles apart, then the possessory conservator has right to possession of the child at 6 p.m. the day the child is dismissed for spring vacation.

Section 153.314 of the Family Code is amended, adding the word "possession" to clarify each reference to a standard possession order.

Section 153.315 of the Family Code is amended, the applicable period of possession, during the school year, when certain holidays take place on Friday or Monday. If the specified holiday falls on Monday, then the weekend period of possession ends at 6 p.m. on that Monday. Subsection (c) of Section 153.31 is added and states that if the specified holiday falls on a Friday, then the weekend period of possession begins on the preceding Thursday at 6 p.m.

Section 153.317 of the Family Code is amended, alternative beginning and ending times for possession. If the conservator elects, and the court finds the election is in the best interest of the child, then the court must change the start and end times to specified, alternative times stated in the statute. A conservator must elect alternative times in a written and filed document with the court, or through an oral statement made in open court on the record.

Section 153.551(b) is amended to specify that a sibling who has been separated from a child because of an action taken by the Department of Family and Protective Services may file suit to request access to the child, whether or not the appointment of managing conservator is an issue. Section 153.551(c) is added and states that, if the court finds access is in the best interest of the child, the court must allow the sibling reasonable access to the child. Section 153.551(c) replaces Section 153.552.

Section 156.002 of the Family Code is amended by adding Subsection (c). The sibling of a child who is separated from the child because of the actions of the Department of Family and Protective Services, may file a suit for modification requesting access to the child in the court with continuing, exclusive jurisdiction.

Section 153.137 and Section 153.552 of the Family Code are repealed.

Sections 102.0045, 153.551, and 156.002 of the Family Code, as amended by this act, apply only to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the

effective date of this act. Sections 153.311, 153.312, Section 153.313, 153.314, 153.315, and 153.317 of the Family Code, as added by this Act, apply only to a court order providing for possession of or access to a child rendered on or after the effective date of this Act. A court order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

**EFFECTIVE DATE**

September 1, 2009.