

By: Gonzalez Toureilles

H.B. No. 1010

A BILL TO BE ENTITLED

AN ACT

relating to the standard possession order for possession of a child by a parent.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 153, Family Code, is amended by adding Section 153.3101 to read as follows:

Sec. 153.3101. REFERENCE TO "SCHOOL" IN STANDARD POSSESSION ORDER. 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 a primary or secondary school, the public school district in which the child primarily resides.

SECTION 2. Section 153.311, Family Code, is amended to read as follows:

Sec. 153.311. MUTUAL AGREEMENT OR SPECIFIED TERMS FOR POSSESSION. The court shall specify in a standard possession order that the parties may have possession of the child at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, shall have possession of the child under the specified terms set out in the standard possession order.

SECTION 3. Section 153.312, Family Code, is amended to read as follows:

Sec. 153.312. PARENTS WHO RESIDE 100 MILES OR LESS APART.
(a) If the possessory conservator resides 100 miles or less from the primary residence of the child, the possessory conservator

1 shall have the right to possession of the child as follows:

2 (1) on weekends throughout the year beginning at 6
3 p.m. on the first, third, and fifth Friday of each month and ending
4 at 6 p.m. on the following Sunday [~~except that, at the possessory~~
5 ~~conservator's election made before or at the time of the rendition~~
6 ~~of the original or modification order, and as specified in the~~
7 ~~original or modification order, the weekend periods of possession~~
8 ~~specified by this subdivision that occur during the regular school~~
9 ~~term shall begin at the time the child's school is regularly~~
10 ~~dismissed and end at 6 p.m. on the following Sunday]; and~~

11 (2) on Thursdays of each week during the regular
12 school term beginning at 6 p.m. and ending at 8 p.m. [~~, or, at the~~
13 ~~possessory conservator's election made before or at the time of the~~
14 ~~rendition of the original or modification order, and as specified~~
15 ~~in the original or modification order, beginning at the time the~~
16 ~~child's school is regularly dismissed and ending at the time the~~
17 ~~child's school resumes], unless the court finds that visitation
18 under this subdivision is not in the best interest of the child.~~

19 (b) The following provisions govern possession of the child
20 for vacations and certain specific holidays and supersede
21 conflicting weekend or Thursday periods of possession. The
22 possessory conservator and the managing conservator shall have
23 rights of possession of the child as follows:

24 (1) the possessory conservator shall have possession
25 in even-numbered years, beginning at 6 p.m. on the day the child is
26 dismissed from school for the school's spring vacation and ending
27 at 6 p.m. on the day before school resumes after that vacation, and

1 the managing conservator shall have possession for the same period
2 in odd-numbered years;

3 (2) if a possessory conservator:

4 (A) gives the managing conservator written
5 notice by April 1 of each year specifying an extended period or
6 periods of summer possession, the possessory conservator shall have
7 possession of the child for 30 days beginning not earlier than the
8 day after the child's school is dismissed for the summer vacation
9 and ending not later than seven days before school resumes at the
10 end of the summer vacation, to be exercised in not more than two
11 separate periods of at least seven consecutive days each, with each
12 period of possession beginning and ending at 6 p.m. on each
13 applicable day; or

14 (B) does not give the managing conservator
15 written notice by April 1 of each year specifying an extended period
16 or periods of summer possession, the possessory conservator shall
17 have possession of the child for 30 consecutive days beginning at 6
18 p.m. on July 1 and ending at 6 p.m. on July 31;

19 (3) if the managing conservator gives the possessory
20 conservator written notice by April 15 of each year, the managing
21 conservator shall have possession of the child on any one weekend
22 beginning Friday at 6 p.m. and ending at 6 p.m. on the following
23 Sunday during one period of possession by the possessory
24 conservator under Subdivision (2), provided that the managing
25 conservator picks up the child from the possessory conservator and
26 returns the child to that same place; and

27 (4) if the managing conservator gives the possessory

1 conservator written notice by April 15 of each year or gives the
2 possessory conservator 14 days' written notice on or after April 16
3 of each year, the managing conservator may designate one weekend
4 beginning not earlier than the day after the child's school is
5 dismissed for the summer vacation and ending not later than seven
6 days before school resumes at the end of the summer vacation, during
7 which an otherwise scheduled weekend period of possession by the
8 possessory conservator will not take place, provided that the
9 weekend designated does not interfere with the possessory
10 conservator's period or periods of extended summer possession or
11 with Father's Day if the possessory conservator is the father of the
12 child.

13 SECTION 4. Section 153.313, Family Code, is amended to read
14 as follows:

15 Sec. 153.313. PARENTS WHO RESIDE OVER 100 MILES APART. If
16 the possessory conservator resides more than 100 miles from the
17 residence of the child, the possessory conservator shall have the
18 right to possession of the child as follows:

19 (1) either regular weekend possession beginning on the
20 first, third, and fifth Friday as provided under the terms
21 applicable to parents who reside 100 miles or less apart or not more
22 than one weekend per month of the possessory conservator's choice
23 beginning at 6 p.m. on the day school recesses for the weekend and
24 ending at 6 p.m. on the day before school resumes after the weekend,
25 provided that the possessory conservator gives the managing
26 conservator 14 days' written or telephonic notice preceding a
27 designated weekend, and provided that the possessory conservator

1 elects an option for this alternative period of possession by
2 written notice given to the managing conservator within 90 days
3 after the parties begin to reside more than 100 miles apart, as
4 applicable;

5 (2) each year beginning at 6 p.m. on the day the child
6 is dismissed from school for the school's spring vacation and
7 ending at 6 p.m. on the day before school resumes after that
8 vacation;

9 (3) if the possessory conservator:

10 (A) gives the managing conservator written
11 notice by April 1 of each year specifying an extended period or
12 periods of summer possession, the possessory conservator shall have
13 possession of the child for 42 days beginning not earlier than the
14 day after the child's school is dismissed for the summer vacation
15 and ending not later than seven days before school resumes at the
16 end of the summer vacation, to be exercised in not more than two
17 separate periods of at least seven consecutive days each, with each
18 period of possession beginning and ending at 6 p.m. on each
19 applicable day; or

20 (B) does not give the managing conservator
21 written notice by April 1 of each year specifying an extended period
22 or periods of summer possession, the possessory conservator shall
23 have possession of the child for 42 consecutive days beginning at 6
24 p.m. on June 15 and ending at 6 p.m. on July 27;

25 (4) if the managing conservator gives the possessory
26 conservator written notice by April 15 of each year the managing
27 conservator shall have possession of the child on one weekend

1 beginning Friday at 6 p.m. and ending at 6 p.m. on the following
2 Sunday during one period of possession by the possessory
3 conservator under Subdivision (3), provided that if a period of
4 possession by the possessory conservator exceeds 30 days, the
5 managing conservator may have possession of the child under the
6 terms of this subdivision on two nonconsecutive weekends during
7 that time period, and further provided that the managing
8 conservator picks up the child from the possessory conservator and
9 returns the child to that same place; and

10 (5) if the managing conservator gives the possessory
11 conservator written notice by April 15 of each year, the managing
12 conservator may designate 21 days beginning not earlier than the
13 day after the child's school is dismissed for the summer vacation
14 and ending not later than seven days before school resumes at the
15 end of the summer vacation, to be exercised in not more than two
16 separate periods of at least seven consecutive days each, with each
17 period of possession beginning and ending at 6 p.m. on each
18 applicable day, during which the possessory conservator may not
19 have possession of the child, provided that the period or periods so
20 designated do not interfere with the possessory conservator's
21 period or periods of extended summer possession or with Father's
22 Day if the possessory conservator is the father of the child.

23 SECTION 5. Section 153.314, Family Code, is amended to read
24 as follows:

25 Sec. 153.314. HOLIDAY POSSESSION UNAFFECTED BY DISTANCE
26 PARENTS RESIDE APART. The following provisions govern possession
27 of the child for certain specific holidays and supersede

1 conflicting weekend or Thursday periods of possession without
2 regard to the distance the parents reside apart. The possessory
3 conservator and the managing conservator shall have rights of
4 possession of the child as follows:

5 (1) the possessory conservator shall have possession
6 of the child in even-numbered years beginning at 6 p.m. on the day
7 the child is dismissed from school for the Christmas school
8 vacation and ending at noon on December 28, and the managing
9 conservator shall have possession for the same period in
10 odd-numbered years;

11 (2) the possessory conservator shall have possession
12 of the child in odd-numbered years beginning at noon on December 28
13 and ending at 6 p.m. on the day before school resumes after that
14 vacation, and the managing conservator shall have possession for
15 the same period in even-numbered years;

16 (3) the possessory conservator shall have possession
17 of the child in odd-numbered years, beginning at 6 p.m. on the day
18 the child is dismissed from school before Thanksgiving and ending
19 at 6 p.m. on the following Sunday, and the managing conservator
20 shall have possession for the same period in even-numbered years;

21 (4) the parent not otherwise entitled under this
22 standard possession order to present possession of a child on the
23 child's birthday shall have possession of the child beginning at 6
24 p.m. and ending at 8 p.m. on that day, provided that the parent
25 picks up the child from the residence of the conservator entitled to
26 possession and returns the child to that same place;

27 (5) if a conservator, the father shall have possession

1 of the child beginning at 6 p.m. on the Friday preceding Father's
2 Day and ending on Father's Day at 6 p.m., provided that, if he is not
3 otherwise entitled under this standard possession order to present
4 possession of the child, he picks up the child from the residence of
5 the conservator entitled to possession and returns the child to
6 that same place; and

7 (6) if a conservator, the mother shall have possession
8 of the child beginning at 6 p.m. on the Friday preceding Mother's
9 Day and ending on Mother's Day at 6 p.m., provided that, if she is
10 not otherwise entitled under this standard possession order to
11 present possession of the child, she picks up the child from the
12 residence of the conservator entitled to possession and returns the
13 child to that same place.

14 SECTION 6. Section 153.315, Family Code, is amended to read
15 as follows:

16 Sec. 153.315. WEEKEND POSSESSION EXTENDED BY HOLIDAY.

17 (a) If a weekend period of possession of the possessory
18 conservator coincides with a student [~~school~~] holiday or teacher
19 in-service day that falls on a Monday during the regular school
20 term, as determined by the school in which the child is enrolled, or
21 with a federal, state, or local holiday that falls on a Monday
22 during the summer months in which school is not in session, the
23 weekend possession shall end at 6 p.m. on [~~a~~] Monday [~~holiday or~~
24 ~~school holiday or shall begin at 6 p.m. Thursday for a Friday~~
25 ~~holiday or school holiday, as applicable~~].

26 (b) If a weekend period of possession of the possessory
27 conservator coincides with a student holiday or teacher in-service

1 day that falls on a Friday during the regular school term, as
2 determined by the school in which the child is enrolled, or with a
3 federal, state, or local holiday that falls on a Friday during the
4 summer months in which school is not in session, the weekend
5 possession shall begin at 6 p.m. on Thursday [~~At the possessory~~
6 ~~conservator's election, made before or at the time of the rendition~~
7 ~~of the original or modification order, and as specified in the~~
8 ~~original or modification order, periods of possession extended by a~~
9 ~~holiday may begin at the time the child's school is regularly~~
10 ~~dismissed~~].

11 SECTION 7. Section 153.317, Family Code, is amended to read
12 as follows:

13 Sec. 153.317. ALTERNATIVE BEGINNING AND ENDING POSSESSION
14 TIMES. (a) If elected by a conservator, the court shall alter the
15 standard possession order under Sections 153.312, 153.314, and
16 153.315 to provide for one or more of the following alternative
17 beginning and ending possession times for the described periods of
18 possession, unless the court finds that the election is not in the
19 best interest of the child:

20 (1) for weekend periods of possession under Section
21 153.312(a)(1) during the regular school term:

22 (A) beginning at the time the child's school is
23 regularly dismissed; or

24 (B) ending at the time the child's school resumes
25 after the weekend;

26 (2) for Thursday periods of possession under Section
27 153.312(a)(2):

1 (A) beginning at the time the child's school is
2 regularly dismissed; or

3 (B) ending at the time the child's school resumes
4 on Friday;

5 (3) for spring vacation periods of possession under
6 Section 153.312(b)(1), beginning at the time the child's school is
7 dismissed for those vacations;

8 (4) for Christmas school vacation periods of
9 possession under Section 153.314(1), beginning at the time the
10 child's school is dismissed for the vacation;

11 (5) for Thanksgiving holiday periods of possession
12 under Section 153.314(3), beginning at the time the child's school
13 is dismissed for the holiday;

14 (6) for Father's Day periods of possession under
15 Section 153.314(5), ending at 8 a.m. on the Monday after Father's
16 Day weekend;

17 (7) for Mother's Day periods of possession under
18 Section 153.314(6):

19 (A) beginning at the time the child's school is
20 regularly dismissed on the Friday preceding Mother's Day; or

21 (B) ending at the time the child's school resumes
22 after Mother's Day; or

23 (8) for weekend periods of possession that are
24 extended under Section 153.315(b) by a student holiday or teacher
25 in-service day that falls on a Friday, beginning at the time the
26 child's school is regularly dismissed on Thursday.

27 (b) A conservator must make an election under Subsection (a)

1 before or at the time of the rendition of a possession order. The
2 election may be made:

3 (1) in a written document filed with the court; or

4 (2) through an oral statement made in open court on the

5 record [~~If a child is enrolled in school and the possessory~~
6 ~~conservator elects before or at the time of the rendition of the~~
7 ~~original or modification order, the standard order must expressly~~
8 ~~provide that the possessory conservator's period of possession~~
9 ~~shall begin or end, or both, at a different time expressly set in~~
10 ~~the standard order under and within the range of alternative times~~
11 ~~provided by one or both of the following subdivisions:~~

12 [~~(1) instead of a period of possession by a possessory~~
13 ~~conservator beginning at 6 p.m. on the day school recesses, the~~
14 ~~period of possession may be set in the standard possession order to~~
15 ~~begin at the time the child's school is regularly dismissed or at~~
16 ~~any time between the time the child's school is regularly dismissed~~
17 ~~and 6 p.m.; and~~

18 [~~(2) except for Thursday evening possession, instead~~
19 ~~of a period of possession by a possessory conservator ending at 6~~
20 ~~p.m. on the day before school resumes, the period of possession may~~
21 ~~be set in the standard order to end at the time school resumes].~~

22 SECTION 8. Section 153.137, Family Code, is repealed.

23 SECTION 9. The changes in law made by this Act apply only to
24 a court order providing for possession of or access to a child
25 rendered on or after the effective date of this Act. A court order
26 rendered before the effective date of this Act is governed by the
27 law in effect on the date the order was rendered, and the former law

1 is continued in effect for that purpose.

2 SECTION 10. This Act takes effect September 1, 2009.