

By: Rodríguez

S.B. No. 1014

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the possession of and access to a child in a suit
3 affecting the parent-child relationship in which there is evidence
4 of family violence, child abuse or neglect, or the sexual assault of
5 one parent by the other parent.

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

7 SECTION 1. Section 153.004, Family Code, is amended to read
8 as follows:

9 Sec. 153.004. PATTERN [~~HISTORY~~] OF FAMILY [~~DOMESTIC~~]
10 VIOLENCE OR CHILD [~~SEXUAL~~] ABUSE OR NEGLECT. (a) In this section:

11 (1) "Child abuse or neglect" has the meaning assigned
12 to the terms "abuse" and "neglect" by Section 261.001.

13 (2) "Family violence" has the meaning assigned by
14 Section 71.004.

15 (a-1) In determining whether to appoint a party as the [a]
16 sole managing conservator or a joint managing conservator of a
17 child, the court shall consider evidence that in the [~~of the~~
18 ~~intentional use of abusive physical force, or evidence of sexual~~
19 ~~abuse, by a party directed against the party's spouse, a parent of~~
20 ~~the child, or any person younger than 18 years of age committed~~
21 ~~within a]~~ two-year period preceding the filing of the suit or during
22 the pendency of the suit the party:

23 (1) engaged in family violence or child abuse or
24 neglect; or

1 (2) was subject to a protective order entered under
2 Chapter 85 in which the protected person was not the child, the
3 other party, or a member of the party's family or household.

4 (b) Except as provided by Subsection (b-1), the [The] court
5 may not appoint a party as the sole managing conservator or a joint
6 managing conservator of a child [conservators] if credible evidence
7 is presented to the court that in the two-year period preceding the
8 date of the filing of the suit or during the pendency of the suit the
9 party:

10 (1) engaged in a [history or] pattern of family
11 violence [past] or [present] child abuse or neglect; [r] or

12 (2) was subject to a protective order entered under
13 Chapter 85 in which the protected person was the child, the other
14 party, or a member of the party's family or household [physical or
15 sexual abuse by one parent directed against the other parent, a
16 spouse, or a child, including a sexual assault in violation of
17 Section 22.011 or 22.021, Penal Code, that results in the other
18 parent becoming pregnant with the child. A history of sexual abuse
19 includes a sexual assault that results in the other parent becoming
20 pregnant with the child, regardless of the prior relationship of
21 the parents. It is a rebuttable presumption that the appointment of
22 a parent as the sole managing conservator of a child or as the
23 conservator who has the exclusive right to determine the primary
24 residence of a child is not in the best interest of the child if
25 credible evidence is presented of a history or pattern of past or
26 present child neglect, or physical or sexual abuse by that parent
27 directed against the other parent, a spouse, or a child].

1 (b-1) If the court finds that both parties have engaged in
2 conduct described by Subsection (b)(1) or were subject to a
3 protective order described by Subsection (b)(2) in the two-year
4 period preceding the date of the filing of the suit or during the
5 pendency of the suit, the court may appoint a party as sole managing
6 conservator or both parties as joint managing conservators if the
7 court finds that the appointment:

8 (1) does not endanger the child's physical health or
9 emotional welfare; and

10 (2) is in the best interest of the child.

11 (b-2) If the court appoints a party as sole managing
12 conservator or both parties as joint managing conservators under
13 Subsection (b-1), the court may render any appropriate order
14 designed to protect the safety and well-being of the child, another
15 party, or any other person in the family or household of a party. An
16 order under this subsection may include a requirement that:

17 (1) the exchange of possession of the child occur in a
18 protective setting;

19 (2) the conservator abstain from consuming alcohol or
20 a controlled substance, as defined by Chapter 481, Health and
21 Safety Code, beginning 12 hours before and during the period of
22 possession of or access to the child; or

23 (3) the conservator attend and complete a battering
24 intervention and prevention program as provided by Article 42.141,
25 Code of Criminal Procedure, or, if such a program is not available,
26 complete a course of treatment under Section 153.010.

27 (c) In ~~[The court shall consider the commission of family~~

1 ~~violence or sexual abuse in~~] determining whether to deny, restrict,
2 or limit the possession of or access to a child, the court shall
3 consider evidence of whether the party engaged in conduct described
4 by Subsection (a-1)(1) or whether a protective order described by
5 Subsection (a-1)(2) was entered against the party in the two-year
6 period preceding the date of the filing of the suit or during the
7 pendency of the suit [~~by a parent who is appointed as a possessory~~
8 ~~conservator~~].

9 (d) Except as provided by Subsection (d-1), the [The] court
10 may not allow a parent to have access to a child if credible [~~for~~
11 ~~whom it is shown by a preponderance of the~~] evidence is presented to
12 the court that the party engaged in conduct described by Subsection
13 (b)(1) or a protective order described by Subsection (b)(2) was
14 entered against the party in the two-year period [~~that~~.

15 [~~(1) there is a history or pattern of committing~~
16 ~~family violence during the two years~~] preceding the date of the
17 filing of the suit or during the pendency of the suit [~~, or~~

18 [~~(2) the parent engaged in conduct that constitutes an~~
19 ~~offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code,~~
20 ~~and that as a direct result of the conduct, the victim of the~~
21 ~~conduct became pregnant with the parent's child~~].

22 (d-1) The [~~Notwithstanding Subsection (d), the~~] court may
23 allow a party who engaged in conduct described by Subsection (b)(1)
24 or was subject to a protective order described by Subsection (b)(2)
25 [~~parent~~] to have access to a child if the court:

26 (1) finds that awarding the party periods of
27 possession of or [~~parent~~] access to the child does [~~would~~] not

1 endanger the child's physical health or emotional welfare and is
2 ~~[would be]~~ in the best interest of the child; and

3 (2) renders a possession order that is designed to
4 protect the safety and well-being of the child, another party, or
5 ~~[and]~~ any other person in the family or household of a party ~~[who~~
6 ~~has been a victim of family violence committed by the parent]~~ and
7 that may include a requirement that:

8 (A) the periods of access be continuously
9 supervised by an entity or person chosen by the court;

10 (B) the exchange of possession of the child occur
11 in a protective setting;

12 (C) the party ~~[parent]~~ abstain from consuming
13 ~~[the consumption of]~~ alcohol or a controlled substance, as defined
14 by Chapter 481, Health and Safety Code, beginning ~~[within]~~ 12 hours
15 before and ~~[prior to or]~~ during the period of possession of or
16 access to the child; or

17 (D) the party ~~[parent]~~ attend and complete a
18 battering intervention and prevention program as provided by
19 Article [42.141](#), Code of Criminal Procedure, or, if such a program is
20 not available, complete a course of treatment under Section
21 [153.010](#).

22 (e) It is a rebuttable presumption that it is not in the best
23 interest of a child for a party ~~[parent]~~ to have unsupervised
24 possession of or access to ~~[visitation with]~~ the child if credible
25 evidence is presented that the party engaged in conduct described
26 by Subsection (b)(1) or was subject to a protective order described
27 by Subsection (b)(2) ~~[of a history or pattern of past or present~~

1 ~~child neglect or physical or sexual abuse by that parent directed~~
2 ~~against the other parent, a spouse, or a child].~~

3 (f) The rendering by the court of an order awarding a party
4 conservatorship of or possession of or access to a child does not
5 prevent the court from ordering a party to perform other parental
6 duties, including paying child support [~~In determining under this~~
7 ~~section whether there is credible evidence of a history or pattern~~
8 ~~of past or present child neglect or physical or sexual abuse by a~~
9 ~~parent directed against the other parent, a spouse, or a child, the~~
10 ~~court shall consider whether a protective order was rendered under~~
11 ~~Chapter 85, Title 4, against the parent during the two-year period~~
12 ~~preceding the filing of the suit or during the pendency of the~~
13 ~~suit)].~~

14 SECTION 2. Subchapter A, Chapter 153, Family Code, is
15 amended by adding Section 153.0041 to read as follows:

16 Sec. 153.0041. SEXUAL ABUSE OR ASSAULT RESULTING IN
17 PREGNANCY. (a) The court may not appoint a parent as the sole
18 managing conservator, a joint managing conservator, or a possessory
19 conservator or allow a parent to have possession of or access to a
20 child if the court finds that a parent has engaged in conduct that
21 constitutes an offense under Section 21.02, 22.011, or 22.021,
22 Penal Code, and the victim of the conduct became pregnant with the
23 child of that parent, unless the court finds that the denial of the
24 appointment of conservatorship or possession of or access to the
25 child is not in the best interest of the child.

26 (b) In appointing a parent who has engaged in conduct that
27 constitutes an offense under Section 21.02, 22.011, or 22.021,

1 Penal Code, as a conservator of a child or allowing that parent
2 possession of or access to the child, the court may render any
3 appropriate order designed to protect the safety and well-being of
4 the child and the parent who was the victim of the conduct
5 constituting the offense.

6 (c) The rendering by the court of an order awarding a parent
7 conservatorship of or possession of or access to the child does not
8 prevent the court from ordering the parent who engaged in conduct
9 that constitutes an offense under Section 21.02, 22.011, or 22.021,
10 Penal Code, to perform other parental duties, including paying
11 child support.

12 (d) This section does not apply to the conservatorship of a
13 child or possession of or access to a child if the parent that
14 engaged in the conduct that constitutes an offense under Section
15 21.02, 22.011, or 22.021, Penal Code, was the spouse of the victim
16 or had a dating relationship with the victim, as that term is
17 defined by Section 71.0021(b), before the child was born and that
18 relationship continued following the birth of the child.

19 SECTION 3. Section 153.131(a), Family Code, is amended to
20 read as follows:

21 (a) Subject to the prohibitions [~~prohibition~~] in Sections
22 [~~Section~~] 153.004 and 153.0041, unless the court finds that
23 appointment of the parent or parents would not be in the best
24 interest of the child because the appointment would significantly
25 impair the child's physical health or emotional development, a
26 parent shall be appointed sole managing conservator or both parents
27 shall be appointed as joint managing conservators of the child.

1 SECTION 4. The change in law made by this Act applies to a
2 suit affecting the parent-child relationship that is pending in a
3 trial court on or filed on or after the effective date of this Act.

4 SECTION 5. This Act takes effect September 1, 2015.