

By: Bowers

H.B. No. 3121

A BILL TO BE ENTITLED

AN ACT

relating to ensuring the safety of children in suits affecting the parent-child relationship.

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

SECTION 1. Section 153.001, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The public policy of this state is to:

(1) as a paramount consideration, provide a safe, healthy, stable, and nonviolent environment for the child; and

(2) as feasible, while providing the environment described by Subdivision (1):

(A) assure that children will have frequent and continuing contact with each parent [~~parents~~] who has [~~have~~] shown the ability to act in the best interest of the child;

~~[(2) provide a safe, stable, and nonviolent environment for the child;]~~ and

(B) [~~(3)~~] encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

(c) The public policy of this state described by Subsection (a) applies to all suits under this title and to all suits affecting the parent-child relationship, including a dispute involving the parent-child relationship referred as provided by Chapter 154,

1 Civil Practice and Remedies Code.

2 SECTION 2. Section 153.002, Family Code, is amended to read
3 as follows:

4 Sec. 153.002. BEST INTEREST OF CHILD. The best interest of
5 the child shall always be the primary consideration of the court in
6 determining the issues of conservatorship and possession of and
7 access to the child. In determining the best interest of the child,
8 providing a safe, healthy, stable, and nonviolent environment for
9 the child is the paramount consideration.

10 SECTION 3. Section 153.004, Family Code, is amended to read
11 as follows:

12 Sec. 153.004. HISTORY OF FAMILY ~~[DOMESTIC]~~ VIOLENCE, ~~[OR]~~
13 SEXUAL ABUSE, NEGLIGENCE, ABUSE, OR EMOTIONAL ABUSE. (a) In every
14 suit regarding conservatorship, possession, or access involving an
15 allegation or a history of family violence, sexual abuse, neglect,
16 abuse, or emotional abuse, the court must first hold an evidentiary
17 hearing that is limited to evidence related to that issue. A
18 determination that family violence, sexual abuse, neglect, abuse,
19 or emotional abuse has been committed shall resolve issues in favor
20 of the parent who did not engage in that conduct and entitles the
21 child to protection from the parent who engaged in that conduct. In
22 the hearing ~~[determining whether to appoint a party as a sole or~~
23 ~~joint managing conservator,~~] the court shall consider:

24 (1) evidence of family violence, the intentional use
25 of abusive physical force, or ~~[evidence of]~~ sexual abuse, by a party
26 directed against the party's spouse, a parent of the child, or any
27 person younger than 18 years of age committed before ~~[within a~~

1 ~~two-year period preceding~~] the filing of the suit or during the
2 pendency of the suit;

3 (2) evidence of emotional abuse by a parent directed
4 against the other parent engaged in before the filing of the suit or
5 during the pendency of the suit; and

6 (3) valid, scientific research concerning the lasting
7 effects on children of adverse childhood experiences, including
8 witnessing or experiencing family violence, sexual abuse, physical
9 abuse, or emotional abuse.

10 (b) The court may not appoint joint managing conservators if
11 credible evidence is presented of a history or pattern of past or
12 present ~~[child]~~ neglect, abuse, family violence, or physical or
13 sexual abuse by one parent directed against the other parent, a
14 spouse, or a child, including a ~~[sexual assault in]~~ violation of
15 Section 21.02, 21.11, 22.011, ~~[or]~~ 22.021, or 25.02, Penal Code~~[~~
16 ~~that results in the other parent becoming pregnant with the child]~~.
17 A history of sexual abuse includes a sexual assault that results in
18 the other parent becoming pregnant with the child, regardless of
19 the prior relationship of the parents.

20 (b-1) The court may not appoint joint managing conservators
21 if credible evidence is presented of a pattern of past or present
22 emotional abuse by one parent directed against the other parent.

23 (b-2) The ~~[It is a rebuttable presumption that the]~~
24 appointment of a parent as the sole managing conservator of a child
25 or as the conservator who has the exclusive right to determine the
26 primary residence of a child is not in the best interest of the
27 child if credible evidence is presented of a history or pattern of:

1 (1) past or present [~~child~~] neglect, abuse, family
2 violence, or physical or sexual abuse by that parent directed
3 against the other parent, a spouse, or a child; or

4 (2) emotional abuse by a parent directed against the
5 other parent.

6 (c) The court shall consider the commission of family
7 violence, [~~or~~] sexual abuse, neglect, abuse, or emotional abuse in
8 determining whether to deny, restrict, or limit the possession of a
9 child by a parent who is appointed as a possessory conservator. The
10 court in its findings for or against a denial, restriction, or
11 limitation shall consider valid, scientific research concerning
12 the lasting effects on children of adverse childhood experiences,
13 including witnessing or experiencing family violence, sexual
14 abuse, neglect, abuse, or emotional abuse.

15 (d) The court may not allow a parent to have access to a
16 child for whom it is shown by a preponderance of the evidence that:

17 (1) there is a history or pattern of committing family
18 violence before [~~during the two years preceding~~] the date of the
19 filing of the suit or during the pendency of the suit; or

20 (2) the parent engaged in conduct that constitutes an
21 offense under Section [21.02](#), [21.11](#), [22.011](#), [22.021](#), or [25.02](#), Penal
22 Code [~~, and that as a direct result of the conduct, the victim of the~~
23 ~~conduct became pregnant with the parent's child~~].

24 (d-1) Notwithstanding Subsection (d), the court may allow a
25 parent to have access to a child if the court:

26 (1) after considering scientific research concerning
27 the lasting effects of adverse childhood experiences, finds by

1 clear and convincing evidence that awarding the parent access to
2 the child would not endanger the child's physical health or
3 emotional welfare and would be in the best interest of the child;
4 and

5 (2) renders a possession order that is designed to
6 protect the safety and well-being of the child and any other person
7 who has been a victim of family violence or sexual abuse committed
8 by the parent and that may include a requirement that:

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

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

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

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

22 (e) It is [~~a rebuttable presumption that it is~~] not in the
23 best interest of a child for a parent to have unsupervised
24 visitation with the child if credible evidence is presented of a
25 history or pattern of past or present [~~child~~] neglect, or abuse,
26 sexual abuse, or family violence by:

27 (1) that parent; or

1 (2) any person who resides in that parent's household
2 or who is permitted by that parent to have unsupervised access to
3 the child during that parent's periods of possession of or access to
4 the child.

5 (e-1) It is not in the best interest of a child for a parent
6 to have unsupervised visitation with the child if credible evidence
7 is presented of the parent's history of a pattern of emotional abuse
8 or other behavior that is likely to cause the child to live with
9 fear and stress.

10 (f) In determining under this section whether there is
11 credible evidence of a history or pattern of past or present [~~child~~
12 neglect, [~~or~~] abuse, emotional abuse, sexual abuse, or family
13 violence by a parent or other person, as applicable, the court shall
14 consider whether a protective order was rendered under Chapter 7A,
15 Code of Criminal Procedure, or Chapter 85 of this code or whether a
16 magistrate's order of emergency protection was rendered under
17 Article 17.292, Code of Criminal Procedure, [~~Title 4,~~] against the
18 parent or other person before [~~during the two-year period~~
19 ~~preceding~~] the filing of the suit or during the pendency of the
20 suit.

21 (f-1) This section applies to suits under this title,
22 including a suit for modification under Chapter 156. An allegation
23 of family violence, sexual abuse, neglect, abuse, or emotional
24 abuse may be raised at any time and shall be heard separately in an
25 evidentiary hearing as provided by this section.

26 (g) In this section:

27 (1) "Abuse" and "neglect" have the meanings assigned

1 by Section 261.001.

2 (2) "Emotional abuse" means:

3 (A) controlling and coercive tactics designed to
4 pressure a person to do what the actor wants based on fear of
5 consequences; or

6 (B) conduct that meets the elements of the
7 offense of harassment under Section 42.07, Penal Code, or stalking
8 under Section 42.072, Penal Code [~~"Family violence" has the meaning~~
9 ~~assigned by Section 71.004~~].

10 SECTION 4. Subchapter A, Chapter 153, Family Code, is
11 amended by adding Section 153.0041 to read as follows:

12 Sec. 153.0041. ENSURING SAFETY IN CASES OF FAMILY VIOLENCE
13 AND ABUSE. (a) This section applies to a suit affecting the
14 parent-child relationship under this title in which a party alleges
15 family violence or abuse by the other party, either during or before
16 a matter related to possession of or access to the child is
17 litigated.

18 (b) An evidentiary hearing limited to issues related to
19 family violence or abuse must be held and a determination made under
20 Section 153.004 before the court may appoint a professional who
21 provides advice or recommendations to the court. Any professional
22 subsequently appointed by the court must have substantial training
23 and experience in family violence and abuse matters to fully
24 understand safety issues, including:

25 (1) behaviors that are associated with higher
26 lethality or injury risks;

27 (2) family violence dynamics;

- 1 (3) effects of family violence on children;
- 2 (4) recognizing family violence; and
- 3 (5) research about batterer narratives and batterer
- 4 accountability.

5 (c) A professional who does not have the expertise described
6 by Subsection (b) must consult with another professional who has
7 that expertise before making any recommendation to the court.

8 (d) The court shall consider current, valid, scientific
9 research concerning family violence and abuse when making a
10 decision in a suit. A court may not permit a practice or approach
11 that does not have a scientific basis and is not an accepted
12 practice within the specialized field of practice of family
13 violence and abuse. A professional who engages in practices based
14 on unscientific beliefs is not qualified to participate in a suit in
15 which family violence or abuse is raised during the course of the
16 suit.

17 (e) In this section, "abuse" has the meaning assigned by
18 Section 261.001.

19 SECTION 5. Section 153.010, Family Code, is amended to read
20 as follows:

21 Sec. 153.010. ORDER FOR FAMILY COUNSELING AND
22 ACCOUNTABILITY. (a) If the court finds at the time of a hearing
23 that the parties have a history of conflict in resolving an issue of
24 conservatorship or possession of or access to the child, the court
25 may order a party to:

26 (1) participate in counseling with a mental health
27 professional who:

- 1 (A) has a background in family therapy;
- 2 (B) has a mental health license that requires as
- 3 a minimum a master's degree; and
- 4 (C) has training in domestic violence if the
- 5 court determines that the training is relevant to the type of
- 6 counseling or batterer accountability needed; and
- 7 (2) pay the cost of counseling.

8 (b) If a person possessing the requirements of Subsection

9 (a)(1) is not available in the county in which the court presides,

10 the court may appoint a person the court believes is qualified to

11 conduct the counseling ordered under Subsection (a). If necessary,

12 the court may appoint a person from a nearby county to provide

13 batterer accountability counseling.

14 SECTION 6. The heading to Section 153.013, Family Code, is

15 amended to read as follows:

16 Sec. 153.013. [~~FALSE~~] REPORT OF FAMILY VIOLENCE OR CHILD

17 ABUSE.

18 SECTION 7. Section 153.013, Family Code, is amended by

19 amending Subsection (b) and adding Subsection (d) to read as

20 follows:

21 (b) Evidence of a false report of child abuse under

22 Subsection (a) is admissible in a suit between the involved parties

23 regarding the terms of conservatorship of a child.

24 (d) If a party makes a report alleging family violence or

25 child abuse by another party to the suit and the court does not make

26 a finding that the report is a knowingly false report, the report

27 may not be used for any purpose against the reporting party in a

1 suit affecting the parent-child relationship.

2 SECTION 8. Section 153.193, Family Code, is amended to read
3 as follows:

4 Sec. 153.193. [~~MINIMAL~~] RESTRICTION ON PARENT'S POSSESSION
5 OR ACCESS. The terms of an order that denies possession of a child
6 to a parent or imposes restrictions or limitations on a parent's
7 right to possession of or access to a child must [~~may not exceed~~
8 ~~those that are required to~~] protect the best interest of the child.
9 It is the policy of this state that providing a safe, healthy,
10 stable, and nonviolent environment for the child is the court's
11 paramount consideration.

12 SECTION 9. Section 153.256, Family Code, is amended to read
13 as follows:

14 Sec. 153.256. FACTORS FOR COURT TO CONSIDER. In ordering
15 the terms of possession of a child under an order other than a
16 standard possession order, the court shall be guided by the
17 guidelines established by the standard possession order and the
18 public policy of this state and may consider:

19 (1) the age, developmental status, circumstances,
20 needs, and best interest of the child;

21 (2) the circumstances of the managing conservator and
22 of the parent named as a possessory conservator, including any
23 chemical dependency of a parent that affects the child's safety or
24 developmental needs; and

25 (3) any other relevant factor.

26 SECTION 10. Section 153.601(2), Family Code, is amended to
27 read as follows:

1 (2) "High-conflict case" means a suit affecting the
2 parent-child relationship, other than a suit involving allegations
3 of family violence or risks to the safety of the child or a party, in
4 which the court finds that the parties have demonstrated an unusual
5 degree of:

6 (A) repetitiously resorting to the adjudicative
7 process;

8 (B) anger and distrust; and

9 (C) difficulty in communicating about and
10 cooperating in the care of their children.

11 SECTION 11. Section 153.005(c), Family Code, is repealed.

12 SECTION 12. The changes in law made by this Act apply only
13 to a suit affecting the parent-child relationship pending in a
14 trial court on the effective date of this Act or filed on or after
15 that date. A suit affecting the parent-child relationship in which
16 a final order is rendered before the effective date of this Act is
17 governed by the law in effect on the date the order was rendered,
18 and the former law is continued in effect for that purpose.

19 SECTION 13. This Act takes effect September 1, 2019.