

BILL ANALYSIS

H.B. 956
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Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Grandparents frequently play an important role in raising children and suits for possession of or access to a child by a grandparent may be in the best interest of a child in certain circumstances. State law preserves the presumption that a fit parent acts in the best interest of the child by requiring a grandparent in such a suit to demonstrate that denial of their possession of or access to the child would significantly impair the child's physical health or emotional well-being. Recent case law is unclear on whether expert testimony is required in all grandparental access suits to meet the "significant impairment" standard. The law also requires the grandparent seeking access to be a parent of a parent of the child and the child's parent is either dead, incarcerated, incompetent, or does not otherwise have actual or court-ordered possession of the child. Only permitting access suits to move forward under these limited circumstances does not seem to further the court's charge to act in the best interest of the child. H.B. 956 seeks to address these issues by clarifying that expert testimony is not necessary to meet the standard of "significant impairment" and by eliminating the categories that limit grandparent eligibility for access so that all biological and adoptive grandparents may file access suits.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 956 amends the Family Code to establish the following with regard to a suit for possession of or access to a child by a grandparent:

- the affidavit required to be executed and attached by a biological or adoptive grandparent filing such a suit is not required to contain expert opinion; and
- a grandparent requesting possession or access is not required to offer expert testimony to meet the burden of proof that denial of possession or access would significantly impair the child's physical health or emotional well-being.

H.B. 956 removes the following from the conditions that must be met for a court to order reasonable possession of or access to a grandchild by a grandparent:

- the grandparent requesting possession of or access to the child is a parent of a parent of the child; and
- the parent of the child:
 - has been incarcerated in jail or prison during the three-month period preceding the filing of the petition;

- has been found by a court to be incompetent;
- is dead; or
- does not have actual or court-ordered possession of or access to the child.

H.B. 956 requires the court, in a suit for possession of or access to a grandchild, to appoint a guardian ad litem for the grandchild at the request of a grandparent who is party to the suit. The guardian ad litem must submit to the court a report regarding the guardian ad litem's recommendations relating to the grandparent's possession of or access to the grandchild and the bases for the guardian ad litem's recommendations.

H.B. 956 applies to a suit affecting the parent-child relationship that is pending in a trial court on the bill's effective date or filed on or after that date.

EFFECTIVE DATE

September 1, 2023.