

## **BILL ANALYSIS**

C.S.H.B. 2948  
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Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, there is no statutory guidance on when a modification of conservatorship of possession and access is necessary in a situation when a parent is incapacitated and the other possessory conservator is not. This situation can create conflict, including when a nonparent restricts access to the child by the parent who is not incapacitated. C.S.H.B. 2948 seeks to resolve this issue by providing for the modification of a court order or portion of a decree regarding conservatorship or possession of or access to a child if the child's conservator is temporarily or permanently incapacitated.

### **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**

C.S.H.B. 2948 amends the Family Code to establish that the temporary or permanent incapacitation of a child's conservator is a material and substantial change in circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator or that sets the terms and conditions of conservatorship or for the possession of or access to the child. For purposes of such a modification, a conservator is considered incapacitated if the conservator experiences a physical condition, mental condition, or period of incarceration that renders the conservator substantially unable to provide food, clothing, or shelter to the child, care for the child's physical health, or care for their own physical health.

C.S.H.B. 2948 entitles the child's other conservator, if the child's conservator becomes incapacitated and another conservator has been appointed for the child, to exercise all of the incapacitated conservator's periods of possession of the child, unless the existing order or portion of a decree sought to be modified denied possession of the child by the other conservator or imposed restrictions or limitations on the other conservator's right to possession of or access to the child. The bill establishes that this entitlement otherwise begins immediately following the onset of the incapacitation and continues until the earlier of the date the incapacitated conservator is again capable of caring for the child or the date the court, due to the material and substantial change in circumstances caused by the incapacitation, renders an order modifying the appointment of the child's conservators or the terms and conditions of conservatorship or for the possession of or access to the child.

C.S.H.B. 2948 prohibits its provisions from being construed to prevent a party with standing to file a suit affecting the parent-child relationship from filing for modification in response to a material and substantial change in circumstances. The bill's provisions apply only in regard to a conservator who becomes incapacitated on or after the bill's effective date.

**EFFECTIVE DATE**

September 1, 2023.

**COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 2948 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced established that a child's possessory conservator is not entitled to temporary possession under the bill's provisions if the court has limited, restricted, or denied possession of or access to the child, the substitute establishes that such a conservator is not entitled to temporary possession if the existing order or portion of a decree sought to be modified denied possession of the child by the possessory conservator or imposed restrictions or limitations on the possessory conservator's right to possession of or access to the child.

The substitute omits the provision from the introduced that established the applicability of its provisions that prohibit the bill from being construed to prevent an applicable party from filing for modification in response to a material and substantial change in circumstances.