

BILL ANALYSIS

C.S.H.B. 1914

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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law does not explicitly recognize incapacitation as a material and substantial change in circumstances for purposes relating to conservatorship, possession of, or access to a child. The bill author has informed the committee that this gap in Texas law makes it difficult for families to adjust conservatorship arrangements without lengthy and expensive legal battles. C.S.H.B. 1914 seeks to address this gap by providing for the consideration of a conservator's incapacitation, including physical or mental conditions or incarceration, for purposes of temporary orders and modification of orders relating to conservatorship or possession of or access to a child. Among other provisions, the bill provides for the other conservator to exercise possession unless restricted by certain prior orders.

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. 1914 amends the Family Code to establish that the temporary or permanent incapacitation of a conservator of a child is a material and substantial change in circumstances and a significant impairment of the child's physical health or emotional development sufficient for purposes of justifying a temporary order and modification of an existing court order or portion of a decree that provides for the appointment of a conservator of a child or that sets the terms and conditions of conservatorship or for the possession of or access to the child. For purposes of that provision, a conservator is incapacitated if the conservator experiences a physical condition, mental condition, or period of incarceration that renders the conservator substantially unable to do any of the following:

- provide food, clothing, or shelter to the child;
- care for the child's physical health; or
- care for the conservator's physical health.

C.S.H.B. 1914 establishes that, if a conservator of a child becomes incapacitated and another conservator has been appointed for the child, that other conservator is entitled to exercise the incapacitated conservator's periods of possession of the child to the degree necessary to ensure the health and welfare of the child, starting immediately following the onset of the incapacitation and continuing until the earlier of the following:

- 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.

The bill establishes that a possessory conservator is not entitled to temporary possession of a child in that manner 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 in order to prevent significant impairment of the child's physical health or emotional development. However, the bill establishes that nothing in its provisions may be construed to prevent a party with standing to file a suit affecting the parent-child relationship from filing for modification of a court order providing for the conservatorship, support, or possession of and access to a child in response to a material and substantial change in circumstances.

C.S.H.B. 1914 applies only in regard to a conservator who becomes incapacitated on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1914 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.

The substitute includes a provision that was not present in the introduced establishing that, for purposes of temporary orders and modification of orders relating to conservatorship or possession of or access to a child, the temporary or permanent incapacitation of a child's conservator is a significant impairment of the child's physical health or emotional development.

With respect to the entitlement of a child's other conservator to exercise the incapacitated conservator's periods of possession of the child, the introduced entitled the other conservator to exercise all of those periods of possession, whereas the substitute entitles the other conservator to exercise those periods of possession to the degree necessary to ensure the health and welfare of the child.

Both versions of the bill include a provision establishing that a possessory conservator is not entitled to temporary possession of a child under the bill's provisions if the existing order or portion of a decree sought to be modified denied possession by the possessory conservator or imposed restrictions or limitations on the possessory conservator's right to possession of or access to the child. However, the substitute specifies that the provision applies if possession was denied or restrictions or limitations were imposed in order to prevent significant impairment of the child's physical health or emotional development.