SUBJECT: Designating the primary residence of a child of joint managing conservators

COMMITTEE: Juvenile Justice and Family Issues — favorable, with amendment

VOTE: 8 ayes — Goodman, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt

0 nays

1 absent — Pickett

WITNESSES: For — None

Against — None

On — Robert L. Green, Texas Fathers Alliance; John J. Sampson

BACKGROUND: The preferred child-custody arrangement in Texas is a joint managing conservatorship wherein rights and responsibilities for the child are allocated between the parents. Parents may sign an agreement to enter a joint managing conservatorship or a court may appoint the parents as joint managing conservators, if that is in the child's best interests. Under Family Code, secs. 153.133 and 153.134, the court may approve an agreement or order an appointment only if the agreement establishes the county of residence for the child, until altered by further order, or designates one conservator to have the exclusive right to determine the primary residence of the child. Once a county has been designated, the conservator with control over the child's residence may move the child anywhere within the county.

DIGEST: HB 2353 would require all orders for joint managing conservatorship to designate one conservator to have the exclusive right to determine the primary residence of the child. The agreement or order could specify the "geographic area" of the child's primary residence rather than a particular county. Alternatively, the agreement or order could specify that the conservator could establish the child's primary residence without regard to geographic location.

HB 2353 would not constitute a material and substantial change for the purposes of modifying an existing court order or child-custody decree.

HB 2353 would take effect September 1, 1999, and would apply to any order in a suit affecting the parent-child relationship rendered on or after that date.

SUPPORTERS SAY:

HB 2353 would give courts more flexibility in designating the primary residence of a child of joint managing conservators. Current law unreasonably limits the primary residence of the child to a certain county. This is an unnecessary burden for parents who live in metropolitan areas that include several counties. A parent might find that he or she has violated a court order simply by moving across the street.

Courts now routinely order the primary residence of the child to include a county and its contiguous counties, even though the statute does not provide for extending the primary residence beyond a county.

The language of HB 2353 should not be more specific than "geographic area" since the individual circumstances of each case require different standards. The court should be entrusted with determining whether the size of a geographic area is fair for both conservators.

Although HB 2353 seems to add the requirement that the court designate a conservator with the exclusive right to establish the primary residence of the child in all cases, this designation is already done in every case, since a conservator with this right must be determined before any hearing on conservatorship can be held.

OPPONENTS SAY:

While a county may be too restrictive an area for a child's primary residence, a "geographic area" would be too broad. A court order could establish a geographic area ranging from a school district to the entire state. This overly broad term could lead to abuse by the parent with control over the child's primary residence.

NOTES:

The committee amendment would change the word "altered" to "modified" to make the terms uniform throughout the code.

A related bill, HB 1071 by Gallego, which would eliminate the designation of the child's primary residence, was considered by the House Juvenile Justice and Family Issues Committee on March 29. Another similar bill, SB 1815 by Harris, has been referred to the Senate Jurisprudence Committee.