

- SUBJECT:** Revisions to child custody, visitation, and access standards
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 10 ayes — Hunter, Hughes, Alonzo, Branch, Hartnett, Jackson, Leibowitz, Lewis, Martinez, Woolley
- 0 nays
- 1 absent — Madden
- WITNESSES:** For — Ken Fuller, Family Law Foundation, State Bar of Texas; (*Registered, but did not testify:* Jessica Bennett, Texas Association for Marriage and Family Therapy; Steve Bresnen, Texas Family Law Foundation)
- Against — None
- BACKGROUND:** Family Code, ch. 153 sets forth rights of custody and access to a child. Subch. F describes the standard child possession order, which sets default visitation periods if a child's parents cannot agree to their own plan. The standard possession order covers vacations, weekends, and holidays.
- In general, visits begin at 6 p.m. on the last day of school before the visitation period and end at 6 p.m. the night before school resumes. Visits alternate between weekends or vacation periods. Special rules may apply to summer vacations. If the parents of a child agree to a plan, they are appointed as joint managing conservators of the child.
- An adult sibling may file suit for access to a child taken because of an action by the Department of Family and Protective Services (DFPS).
- DIGEST:** HB 1012 would amend and repeal various provisions of the Family Code regarding joint custody, the standard child possession order's pick-up and drop-off times, alternative beginning and ending possession times, and the ability of an adult sibling to seek access to a child taken because of an action by DFPS.

Joint managing conservators. HB 1012 would require a court to approve a written parenting agreement in which parents jointly designated their child's primary residence.

Pick-up and surrender times for child possession periods in the standard child possession order. For standard child possession orders, HB 1012 would require pick-up and drop-off times of 6 p.m. Specifically, the bill would add this requirement to the following possession periods:

- the summer vacation period when school was not in session;
- weekend possession periods extended by a holiday or teacher in-service day that fell on a Friday or a Monday; and
- for parents who reside more than 100 miles apart, the spring vacation period during the school session and the summer vacation period while school was not in session.

HB 1012 would add ‘teacher in-service’ days as days that extend weekend periods of possession, similar to holidays under current law.

For the purposes of HB 1012, any reference to “school” in standard possession orders would mean the primary or secondary school in which the child was enrolled, or the local school district of the primary residence if the child was not enrolled in school.

Alternative beginning and ending possession times. HB 1012 would allow the court to alter the standard possession order and provide for alternative beginning and ending times for weekends, vacations, and holidays. A parent would have to submit a written document filed with the court or an oral statement made on the record in open court.

Adult sibling access to a child. HB 1012 would specifically limit an adult sibling's right to seek access to a child only to instances in which the child was separated from the adult sibling by an action of DFPS. The bill would require a court to allow access to the child by the child’s adult sibling if the court found that access would be in the best interest of the child.

Miscellaneous provisions. HB 1012 would amend certain provisions of the family code regarding standard possession orders to insert the word “possession” to clarify that the phrase “standard order” referred to “standard possession order.”

Applicability and effective date. The bill would apply only to court orders providing for possession of or access to a child rendered on or before the bill's effective September 1, 2009 effective date. The bill's provisions affecting the right of an adult sibling of a child to sue for access to the child would apply only to suits affecting the parent-child relationship filed on or after the bill's effective date.

**SUPPORTERS
SAY:**

HB 1012 would improve the Family Code by clarifying certain provisions that have led to unnecessary discord and legal disputes between parents. For example, some courts have interpreted the provisions involving joint custody to require parents who wish to jointly designate their child's primary residence to select only one parent as having the exclusive right to do so. Whether the Family Code intended this result or not, it makes little sense to force parents who mutually agree to choose where their child will live to pick one parent over the other to make the decision. HB 1012 would remove a legal sticking point from no-conflict divorces and unambiguously allow parents to jointly designate the primary residence of their child if they mutually agreed to do so and if the court found that it would be in the best interest of the child.

Another source of litigated conflict has involved the Family Code's apparent discrepancies for pick-up and surrender times for periods of child possession in the standard child possession order. Some provisions explicitly state that the possession period shall begin and end at 6 p.m. on the days that possession begins and ends, while some require possession periods to begin at the end of a school day. HB 1012 would require that all pick-up and surrender times in the standard child possession order begin and end at 6 p.m. This clarifying language would simultaneously establish a uniform standard for possession periods and remove a source of conflict for parents who might otherwise have argued about unclear possession times. It would not affect the ability of the parents or the court to set alternate times of possession.

HB 1012 also would clarify that an adult sibling of a child could only seek access to the child if the two had been separated by DFPS. This was always the intent of the current law, but some confusion in the statutory language has led to litigation challenging the restrictions on an adult sibling's right of access. HB 1012 would unambiguously limit this right of access to situations in which a child was removed by DFPS.

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OPPONENTS
SAY:

No apparent opposition.

NOTES:

HB 1012 contains and combines the provisions in HB 1009, 1010, and 1011, all by Gonzalez Tourelles, regarding joint managing conservators, standard possession orders, and adult siblings, respectively.