

- SUBJECT:** Modifying certain court orders after the death of a child's conservator
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu
0 nays
- WITNESSES:** For — Patsy Rainwater-Maddux; (*Registered, but did not testify:* Amy Bresnen, Texas Family Law Foundation; Anna Alkire; Beth Maynard; Ruth York)

Against — None

On — Jeremy Newman, Texas Home School Coalition
- BACKGROUND:** Family Code sec. 156.101 establishes grounds for the modification of an order establishing conservatorship or possession and access to a child. A court may modify an order that provides for the appointment of a conservator for a child if the modification would be in the child's best interest and the circumstances of the child, conservator, or other party affected by the order have materially and substantially changed since the order was rendered.
- DIGEST:** HB 1849 would establish the death of a child's conservator as a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that:
- provided for the appointment of a conservator; or
 - set the terms and conditions of conservatorship or for the possession of or access to the child.

Before modifying an order, the court would have to consider any term or condition of the order or portion of a decree that denied possession of the

child to a parent or imposed restrictions or limitations on a parent's right to possession of or access to the child. The modified order would have to include those restrictions or limitations if the court found that the restrictions or limitations continued to be in the child's best interest.

The bill would take effect September 1, 2021, and would apply to a suit for modification that was pending in a trial court on the effective date or that was filed on or after that date.

**SUPPORTERS
SAY:**

HB 1849 would protect Texas children by ensuring that they were placed in a safe and stable environment following the death of a custodial parent. If divorced parents have a court order or divorce decree that imposes limitations on one parent regarding access to the child, the decree is upheld only when both parents are alive. When a custodial parent dies, generally possession of the child can revert to the surviving parent, which could put children at risk by placing them with a surviving but potentially unfit parent. HB 1849 would prevent dangerous placements by requiring the court to revisit orders or divorce decrees following the death of a custodial parent to modify the decree or include the original limitations.

**CRITICS
SAY:**

HB 1849 could deprive a surviving parent of access to the parent's child by requiring a court to revisit any limitations or restrictions contained in an original divorce decree or related order after the death of a child's custodial parent. The bill also could open the door for parties who were not part of the original divorce decree, such as grandparents or others, to weigh in on the decision of where a child is placed after the death of the child's custodial parent.