

**SUBJECT:** Establishing rights for possession of and access to a child under age three

**COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended

**VOTE:** 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu

0 nays

**WITNESSES:** For — Bill Morris, Texas Family Law Foundation; (*Registered, but did not testify*: Amy Bresnen, Steve Bresnen, and David Kazen, Texas Family Law Foundation; Thomas Parkinson)

Against — Taran Champagne; (*Registered, but did not testify*: David OConnor)

**BACKGROUND:** Under Family Code sec. 153.254, which governs the conservatorship, possession, and access to a child less than 3 years of age, a court is required to render an order appropriate under the circumstances for possession of a child that considers evidence of all relevant factors, including the age of the child and any other evidence of the best interest of the child. Sec. 153.258 establishes that in all cases in which possession of a child under the age of 3 is contested by a parent, the court must state in writing the specific reasons for the variance from the standard order of possession.

**DIGEST:** CSHB 853 would revise the factors a court was required to consider when rendering an order for possession of a child less than 3 years of age. The revised factors would include:

- the preexisting parent-child relationship, including whether there had been minimal or inconsistent contact with the child and the child's siblings, if applicable;
- the present and immediate physical, medical, and behavioral, or developmental needs of the child;
- the impact and influence of each individual residing in a residence

with a party to the suit or having considerable interaction with the child during a party's periods of possession;

- the present and proposed environments in which possession and access had occurred or was to occur;
- the presence or absence of siblings during periods of possession;
- the child's need to develop healthy attachments to each party, if possible;
- the need for a graduated possession schedule when there has been minimal or inconsistent contact with the child;
- the ability of the parties to share in the responsibilities, rights, and duties of caring for the child; and
- any other issue consistent with the best interest of the child, taking into consideration the circumstances of the parties.

The bill would remove the requirement that the court consider the effect on the child that may result from separation from either party.

The bill would authorize the court to render an order for periods of possession of a child less than 3 years of age based on the agreement of the parties if the agreement was in the best interest of the child.

In all cases in which possession of a child by a parent was contested and the possession of the child varied from the standard possession order, including a possession order for a child under 3 years of age, on request by a party the court would be required to state in writing the specific reasons for the variance from the standard possession order.

The bill would take effect September 1, 2021, and would apply only to a suit affecting the parent-child relationship that was filed on or after the effective date.