

BILL ANALYSIS

Senate Research Center

S.B. 279
By: Nelson et al.
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, a court may modify an existing order providing for the conservatorship of a child if the appointed conservator voluntarily relinquishes primary care and possession of the child to another person for at least six months. This law does not protect military parents who are deployed on active duty from a court modifying the order due to the conservator's absence.

S.B. 279 amends current law relating to a prohibition against certain court orders in a suit affecting the parent-child relationship during a parent's military deployment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 153, Family Code, by adding Subchapter L, as follows:

SUBCHAPTER L. MILITARY DUTY

Sec. 153.701. DEFINITIONS. Defines "designated person," "military deployment," "military mobilization," and "temporary military duty" in this subchapter.

Sec. 153.702. TEMPORARY ORDERS. (a) Authorizes either conservator, if a conservator is ordered to military deployment, military mobilization, or temporary military duty that involves moving a substantial distance from the conservator's residence so as to materially affect the conservator's ability to exercise the conservator's rights and duties in relation to a child, to file for an order under this subchapter.

(b) Authorizes a court to render a temporary order in a proceeding under this subchapter regarding:

(1) possession of or access to the child; or

(2) child support.

(c) Authorizes a temporary order rendered by the court under this subchapter to grant rights to and impose duties on a designated person regarding the child, except the court may not require the designated person to pay child support.

(d) Provides that after a conservator's military deployment, military mobilization, or temporary military duty is concluded, and the conservator returns to the conservator's usual residence, the temporary orders under this section terminate and the rights of all affected parties are governed by the terms of any court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty.

Sec. 153.703. APPOINTING DESIGNATED PERSON FOR CONSERVATOR WITH EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD. (a) Authorizes the court, if the conservator with the exclusive right to designate the primary

residence of the child is ordered to military deployment, military mobilization, or temporary military duty, to render a temporary order to appoint a designated person to exercise the exclusive right to designate the primary residence of the child during the military deployment, military mobilization, or temporary military duty in the following order of preference:

- (1) the conservator who does not have the exclusive right to designate the primary residence of the child;
- (2) if appointing the conservator described by Subdivision (1) is not in the child's best interest, a designated person chosen by the conservator with the exclusive right to designate the primary residence of the child; or
- (3) if appointing the conservator described by Subdivision (1) or the person chosen under Subdivision (2) is not in the child's best interest, another person chosen by the court.

(b) Provides that designated person named in a temporary order rendered under this section has the rights and duties of a nonparent appointed as sole managing conservator under Section 153.371 (Rights and Duties of Nonparent Appointed as Sole Managing Conservator).

(c) Authorizes the court to limit or expand the rights of a nonparent named as a designated person in a temporary order rendered under this section as appropriate to the best interest of the child.

Sec. 153.704. APPOINTING DESIGNATED PERSON TO EXERCISE VISITATION FOR CONSERVATOR WITH EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD IN CERTAIN CIRCUMSTANCES. (a) Authorizes the court, if the court appoints the conservator without the exclusive right to designate the primary residence of the child under Section 153.703(a)(1), to award visitation with the child to a designated person chosen by the conservator with the exclusive right to designate the primary residence of the child.

(b) Requires that the periods of visitation be the same as the visitation to which the conservator without the exclusive right to designate the primary residence of the child was entitled under the court order in effect immediately before the date the temporary order is rendered.

(c) Requires that the temporary order for visitation provide that:

- (1) the designated person under this section has the right to possession of the child for the periods and in the manner in which the conservator without the exclusive right to designate the primary residence of the child is entitled under the court order in effect immediately before the date the temporary order is rendered;
- (2) the child's other conservator and the designated person under this section are subject to the requirements of Section 153.316 (General Terms and Conditions), with the designated person considered for purposes of that section to be the possessory conservator;
- (3) the designated person under this section has the rights and duties of a nonparent possessory conservator under Section 153.376(a) (providing that unless limited by court order or other provisions of this chapter, a nonparent, licensed child-placing agency, or authorized agency appointed as a possessory conservator has certain rights) during the period that the person has possession of the child; and

(4) the designated person under this section is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(d) Authorizes the court to limit or expand the rights of a nonparent designated person named in a temporary order rendered under this section as appropriate to the best interest of the child.

Sec. 153.705. APPOINTING DESIGNATED PERSON TO EXERCISE VISITATION FOR CONSERVATOR WITHOUT EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD. (a) Authorizes the court, if the conservator without the exclusive right to designate the primary residence of the child is ordered to military deployment, military mobilization, or temporary military duty, to award visitation with the child to a designated person chosen by the conservator, if the visitation is in the best interest of the child.

(b) Requires that the temporary order for visitation provide that:

(1) the designated person under this section has the right to possession of the child for the periods and in the manner in which the conservator described by Subsection (a) would be entitled if not ordered to military deployment, military mobilization, or temporary military duty;

(2) the child's other conservator and the designated person under this section are subject to the requirements of Section 153.316, with the designated person considered for purposes of that section to be the possessory conservator;

(3) the designated person under this section has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the designated person has possession of the child; and

(4) the designated person under this section is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(c) Authorizes the court to limit or expand the rights of a nonparent designated person named in a temporary order rendered under this section as appropriate to the best interest of the child.

Sec. 153.706. TEMPORARY ORDER FOR CHILD SUPPORT. Provides that a temporary order rendered under this subchapter may result in a change of circumstances sufficient to justify a temporary order modifying the child support obligations of a party.

Sec. 153.707. EXPEDITED HEARING. (a) Requires the court, for good cause shown, on a motion by the conservator who has been ordered to military deployment, military mobilization, or temporary military duty, to hold an expedited hearing if the court finds that the conservator's military duties have a material effect on the conservator's ability to appear in person at a regularly scheduled hearing.

(b) Requires that a hearing under this section, if possible, take precedence over other suits affecting the parent-child relationship not involving a conservator who has been ordered to military deployment, military mobilization, or temporary military duty.

(c) Requires the court, on a motion by any party, after reasonable advance notice and for good cause shown, to allow a party to present testimony and evidence by electronic means, including by teleconference or through the Internet.

Sec. 153.708. ENFORCEMENT. Authorizes temporary orders rendered under this subchapter to be enforced by or against the designated person to the same extent that an

order would be enforceable against the conservator who has been ordered to military deployment, military mobilization, or temporary military duty.

Sec. 153.709. ADDITIONAL PERIODS OF POSSESSION OR ACCESS. (a) Authorizes the conservator, not later than the 90th day after the date a conservator without the exclusive right to designate the primary residence of the child who is a member of the armed services concludes the conservator's military deployment, military mobilization, or temporary military duty, to petition the court to:

(1) compute the periods of possession of or access to the child to which the conservator would have otherwise been entitled during the conservator's deployment; and

(2) award the conservator additional periods of possession of or access to the child to compensate for the periods described by Subdivision (1).

(b) If the conservator described by Subsection (a) petitions the court under Subsection (a), the court:

(1) is required to compute the periods of possession or access to the child described by Subsection (a)(1); and

(2) is authorized to award to the conservator additional periods of possession of or access to the child for a length of time and under terms the court considers reasonable, if the court determines that:

(A) the conservator was on military deployment, military mobilization, or temporary military duty in a location where access to the child was not reasonably possible; and

(B) the award of additional periods of possession of or access to the child is in the best interest of the child.

(c) Requires that the court, in making the determination under Subsection (b)(2):

(1) consider:

(A) the periods of possession of or access to the child to which the conservator would otherwise have been entitled during the conservator's military deployment, military mobilization, or temporary military duty, as computed under Subsection (b)(1);

(B) whether the court named a designated person under Section 153.705 to exercise limited possession of the child during the conservator's deployment; and

(C) any other factor the court considers appropriate; and

(2) is not required to award additional periods of possession of or access to the child that equals the possession or access to which the conservator would have been entitled during the conservator's military deployment, military mobilization, or temporary military duty, as computed under Subsection (b)(1).

(d) Provides that after the conservator described by Subsection (a) has exercised all additional periods of possession or access awarded under this section, the rights of all affected parties are governed by the terms of the court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty.

SECTION 2. Amends Section 156.006, Family Code, by adding Subsection (c), to provide that Subsection (b)(2) (relating to prohibiting the court from issuing certain orders unless the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months and the order is in the best interests of the child) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

SECTION 3. Amends Section 156.101, Family Code, as follows:

Sec. 156.101. GROUND FOR MODIFICATION OF ORDER ESTABLISHING CONSERVATORSHIP OR POSSESSION AND ACCESS. (a) Authorizes the court to modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and:

(1) the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of:

(A) the date of the rendition of the order; or

(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based;

(2) the child is at least 12 years of age and has filed with the court, in writing, the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; or

(3) the conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months.

(b) Provides that Subsection (a)(3) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

SECTION 4. Amends Section 156.102, Family Code, by adding Subsection (d), to provide that Subsection (b)(3) (relating to requiring the affidavit to contain at least one of three allegations, including that the person has voluntarily relinquished the primary care and possession of the child for at least six months and it is in the best interests of the child) does not apply to a person who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

SECTION 5. Amends Section 156.105, Family Code, as follows:

Sec. 156.105. New heading: MODIFICATION OF ORDER BASED ON MILITARY DUTY. Provides that the military duty of a conservator who is ordered to military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701, does not by itself constitute a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child except that the court may render a temporary order under Subchapter L, Chapter 153. Deletes existing text defining "military deployment." Deletes existing text providing that the military deployment of a person who is a possessory conservator or a joint managing conservator without the exclusive right to designate the primary residence of the child is a material and substantial change of circumstances sufficient to justify a modification of an

existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child. Deletes existing text authorizing the court, if the court determines that modification is in the best interest of the child, to modify the order or decree to provide in a manner consistent with Section 153.3161 (Possession During Military Deployment) for possession of the child during the period of the military deployment by a person designated by the deployed conservator.

SECTION 6. Repealer: Section 153.3161 (Possession During Military Deployment), Family Code.

Repealer: Section 156.410 (Change in Circumstances Resulting From Military Service), Family Code.

SECTION 7. Provides that the changes in law made by this Act apply to a suit affecting the parent-child relationship that is pending in a trial court on the effective date of this Act or filed on or after that date.

SECTION 8. Effective date: September 1, 2009.