

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 1228  
By: Dukes et al. (Davis)  
Jurisprudence  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It has been reported that thousands of women in the United States become pregnant from rape each year. Noting a recent law journal article written by a lawyer who battled her rapist in court over visitation rights for the child that resulted from the rape, interested parties assert that few states have passed laws to aid the large number of women who become pregnant as a result of sexual assault and choose to carry their pregnancies to term. These parties contend that without such laws, a man who fathers a child through sexual assault can have the same custody and visitation privileges to that child as any other father.

H.B. 1228 seeks to address this inequity by providing women who become pregnant as the result of sexual assault with more legal rights.

H.B. 1228 amends current law relating to consideration by the court of sexual abuse and conduct that constitutes sexual assault in certain suits affecting the parent-child relationship.

### **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 the heading to Section 153.004, Family Code, to read as follows:

Sec. 153.004. HISTORY OF DOMESTIC VIOLENCE OR SEXUAL ABUSE.

SECTION 2. Amends Section 153.004, Family Code, by amending Subsections (a), (c), and (d) and adding Subsection (d-1), as follows:

(a) Requires the district court, juvenile court having the same jurisdiction as a district court, or other court expressly given jurisdiction of a suit affecting the parent-child relationship (court), in determining whether to appoint a party as a sole or joint managing conservator, to consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit.

(c) Requires the court to consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator.

(d) Authorizes the court to not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit, or the parent engaged in conduct that constitutes an offense under Section 21.02, 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 25.02 (Prohibited Sexual Conduct), Penal Code, and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

(d-1) Creates this subsection from existing text. Authorizes the court, notwithstanding Subsection (d), to allow a parent to have access to a child if the court finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child, and renders a possession order that is designed to protect the safety and well-being of the child and any other person who has been a victim of family violence committed by the parent and that may include certain requirements.

SECTION 3. Amends Section 154.001(a-1), Family Code, as follows:

(a-1) Authorizes the order each person who is financially able and whose parental rights have been terminated with respect to either a child in substitute care for whom the Department of Family and Protective Services has been appointed managing conservator or a child who was conceived as a direct result of conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code, to support the child in the manner specified by the order until a certain date or, if the child is disabled as defined by this chapter, for an indefinite period.

SECTION 4. Amends Section 161.007, Family Code, as follows:

Sec. 161.007. TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT. (a) Requires the court, except as provided by Subsection (b), to order the termination of the parent-child relationship of a parent and a child if the court finds by clear and convincing evidence that:

- (1) the parent has engaged in conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;
- (2) as a direct result of the conduct described by Subdivision (1), the victim of the conduct became pregnant with the parent's child; and
- (3) termination is in the best interest of the child.

Deletes existing text authorizing the court to order the termination of the parent-child relationship of a parent and a child if the court finds that the parent has been convicted of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code; as a direct result of the commission of the offense by the parent, the victim of the offense became pregnant with the parent's child; and termination is in the best interest of the child.

(b) Authorizes the court, if, for the two years after the birth of the child, the parent was married to or cohabiting with the other parent of the child, to order the termination of the parent-child relationship of the parent and the child if the court finds that the parent has been convicted of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code; as a direct result of the commission of the offense by the parent, the other parent became pregnant with the child; and termination is in the best interest of the child.

SECTION 5. Makes application of the change in law made by this Act prospective.

SECTION 6. Provides that the enactment of this Act constitutes a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for the possession of or access to a child rendered before the effective date of this Act.

SECTION 7. Effective date: September 1, 2013.